TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. 180

JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

THE FIRST NATIONAL BANK OF PAULS VALLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED APRIL 14, 1908.

(21,113.) A

(21,113.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 349.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

THE FIRST NATIONAL BANK OF PAULS VALLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 4, 1908.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the First National Bank of Pauls Valley and W. A. Ledbetter, S. T. Bledsoe, J. B. Thompson, and Dorset Carter, its attorneys, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held and now in session at the City of Washington in the District of Columbia within thirty days from the date of this writ pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein Jennie Lee Williams, S. L. Williams and S. T. Williams are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and that speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 19th day of March, 1908.

R. L. WILLIAMS,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:
W. H. L. CAMPBELL,
Clerk of said Court.
By W. M. BONNER, *Deputy.*

[Seal Supreme Court, State of Oklahoma.]

I hereby acknowledge service of the within Citation this 25 day of March, 1908.

S. T. BLEDSOE,
Attorneys for Appellees.

[Endorsed:] No. 642. Jennie Lee Williams *et al.*, Plaintiffs in Error, *vs.* First National Bank of Pauls Valley, Defendant in Error. Citation. Filed Mar. 26, 1908. W. H. L. Campbell, Clerk Supreme Court.

2 In the Supreme Court of the State of Oklahoma.

No. 642.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS,
Plaintiffs in Error,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Defendant in Error.

To the Hon. Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now the above named plaintiffs, Jennie Lee Williams, S. L. Williams and S. T. Williams and each of them by their respective

attorneys and complain that in the record and proceedings had in said cause and also in the rendition of the judgment in the above entitled cause in said Supreme Court for the State of Oklahoma at the present term thereof on the 18th day of February against said plaintiffs manifest error hath happened to the great damage of said plaintiffs, and by said judgment said plaintiffs were denied rights privileges and immunities under the Statutes of the United States and treaties between the United States and the Choctaw and Chickasaw Tribes of Indians, specially set up and claimed by them.

Wherefore said plaintiffs and each of them pray for the allowance of a writ of error, and for an order fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States, and superseded pending a hearing by said Court.

Dated this 19th day of March, 1908.

L. S. DOLMAN,
DAVIS & THOMASON,
Attorneys for Plaintiffs in Error.

Allowed.

R. L. WILLIAMS,
Chief Justice, Supreme Court, State of Oklahoma.

Endorsed on back as follows: No. 642. Jennie Lee Williams *et al.*, Plaintiffs in Error, *vs.* First National Bank of Pauls Valley, Defendant in Error. Petition for Writ of Error. Filed Mar. 10, 1908. W. H. L. Campbell, Clerk Supreme Court.

3 In the Supreme Court of the State of Oklahoma.

No. 642.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS,
Plaintiffs in Error,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Defendant in Error.

Now come Jennie Lee Williams, S. L. Williams and S. T. Williams, the plaintiffs in error, and respectfully say that the Supreme Court of Oklahoma in its proceedings in this cause, and in affirming the judgment of the trial court committed error as follows:

First. This cause involving the construction of the Statutes of the United States in relation to lands in the Indian Territory, as well as the construction of the treaties between the United States and the Choctaw and Chickasaw tribes of Indians, the Supreme Court of Oklahoma, was without jurisdiction and erred in denying the motion of these plaintiffs to remove this cause to the United States Circuit Court for the Eastern District of Oklahoma.

Second. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' First Assignment of Error filed in the trial court, the same being as follows: "The court (meaning the trial court) erred in overruling and denying the general and special demurrers

of defendants to the plaintiff's first amended complaint for reasons stated in said demurrers; the said amended complaint upon its face having shown that the plaintiff seeks judgment against the defendants upon an illegal and void contract."

Third. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' Second Assignment of Error filed in the trial court, which assignment is as follows: "The court erred in sustaining the general and special demurrers of the plaintiff to the amended answer of defendants to the first amended complaint and in dismissing this cause from the docket of the court in that the said amended answer contains statements constituting a good and valid defense to the plaintiff's alleged cause of action as shown by its first amended complaint."

4 Fourth. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' Third Assignment of Error filed in the trial court, which assignment is as follows: The court erred in sustaining the plaintiffs' general and special demurrers to paragraph three of the defendant's amended answer to the first amended complaint, in that in said paragraph the defendant states that at the execution of the conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, that the said Susan E. Mays, did not have the possession, right or title to the premises described in said conveyance and did not own the improvements situated thereon and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration for the note sued on for that reason totally failed."

Fifth. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' Fourth Assignment of Error filed in the trial court, which assignment is as follows: "The court erred in rendering judgment in favor of plaintiff and against defendants for the sum of Five Thousand Five Hundred and Seventy Two Dollars with interest thereon from the date of said judgment at the rate of ten per cent. per annum and judgment for the cost of the action and in awarding execution upon said judgment."

Sixth. The amended answer showing that the consideration for the note sued on was for an attempted sale of unallotted lands in the Chickasaw Nation, which sale was illegal and prohibited by the Statutes of the United States, and the treaties between the United States and the Choctaw and Chickasaw Indians, the Supreme Court of Oklahoma erred in holding said amended answer insufficient in law and in affirming the action of the trial court in sustaining demurrers thereto.

L. S. DOLMAN,
DAVIS & THOMASON,
Attorneys for Plaintiffs in Error.

[Endorsed:] No. 642. Jennie Lee Williams *et al.*, Plaintiffs in Error, *vs.* First National Bank of Pauls Valley, Defendant in Error. Assignment of Errors. Filed Mar. 10, 1908. W. H. L. Campbell, Clerk Supreme Court.

5 In the Supreme Court for the State of Oklahoma.

JENNIE LEE WILLIAMS ET AL., Plaintiffs in Error,
vs.
THE FIRST NATIONAL BANK OF PAULS VALLEY, Defendants in Error.

Order Allowing Writ.

The above entitled matter coming on to be heard upon the petition of plaintiffs in error therein for a writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented in the record in said matter:

It is ordered that a writ of Error be, and is hereby allowed to this Court from the Supreme Court of the United States, and that the bond presented by the said petitioner be, and the same is hereby, approved this the 19th day of March, 1908.

R. L. WILLIAMS,
Chief Justice of the Supreme Court of the State of Oklahoma.

[SEAL.]

Attest:
W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed on back as follows: Jennie Lee Williams *et al.*, Plaintiffs in Error, *vs.* First National Bank of Pauls Valley, Defendant in Error. Order Allowing Writ. Filed Mar. 24, 1908. W. H. L. Campbell, Clerk Supreme Court.

6 In the Supreme Court in and for the State of Oklahoma.

JENNIE LEE WILLIAMS ET AL., Plaintiff- in Error,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents: that we, Jennie Lee Williams, S. L. Williams and S. T. Williams, as principals, and The Southern Surety Co. of Oklahoma as sureties, are held and firmly bound unto the First National Bank of Pauls Valley, Oklahoma, in the sum of $10,000 to be paid to the obligee, its successors, representatives and assigns; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents:

Whereas, the above named plaintiffs in error have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of Oklahoma.

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this the 11 day of March, A. D. 1908.

JENNIE LEE WILLIAMS,
S. L. WILLIAMS,
S. F. WILLIAMS, *Principals.*
SOUTHERN SURETY CO. OF OKLAHOMA, *Sureties.*
[SEAL.] By E. W. ROBERTS, *Gen. Agent.*

Signed, sealed and delivered in the presence of
——— ———.

7 STATE OF OKLAHOMA, *County of Carter, ss:*

On this 14 day of March, 1908, before me personally appeared Jennie Lee Williams, S. L. Williams and S. F. Williams, to me known to be the persons described in and who executed the foregoing bond and acknowledged to me that they executed the same as their free and voluntary act and deed.

[SEAL.] C. E. STICKLEY.

My Commission expires Jan. 2nd, 1909.

8 STATE OF OKLAHOMA, *County of Carter, ss:*

On this 11 day of March, A. D. 1908, personally appeared before me E. W. Roberts who, being duly sworn deposes and says that he is the duly accredited agent of the Southern Surety Co. of Oklahoma *company of —;* that said corporation has complied with all the laws of Oklahoma permitting it to do business in said state and guarantee the performance of the conditions of the foregoing bond; that the seal affixed to the foregoing instrument is the corporation seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and the said E. W. Roberts acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] TOM E. EARP,
Notary Public, Carter County, of Oklahoma.

My Commission expires May 24, 1909.

I hereby approve the foregoing bond and sureties to operate as a supercedeas as to said judgment.

R. L. WILLIAMS,
Chief Justice of the Supreme Court of the State of Oklahoma.

Endorsed on back as follows:
Jennie Lee Williams, *et al.*, Plaintiffs in Error, *vs.* The First National Bank of Pauls Valley, Oklahoma, Defendants in Error. Bond on Writ of Error. Filed Mar. 24, 1908. W. H. L. Campbell, Clerk Supreme Court.

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Oklahoma, before you or some of you, being the highest court of law of the said State in which a decision could be had in the said suit, between Jennie Lee Williams, S. L. Williams and S. T. Williams, plaintiffs in error, and First National Bank of Pauls Valley, defendant in error, wherein was drawn in question the construction of the Statutes of the United States in relation to lands in the Indian Territory and of Treaties between the United States and the Choctaw and Chickasaw tribes of Indians and the decision was against the rights, privileges and exemptions specially set up and claimed under the same by the plaintiffs in error, and a manifest error hath happened, to the great damage of the said Jennie Lee Williams, S. L. Williams and S. T. Williams, plaintiffs in error, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 18th day of April, 1908, next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the — day of March, 1908.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,
Clerk of the Circuit Court of the United States.

Allowed by:
R. L. WILLIAMS,
Chief Justice of the Supreme Court of State of Oklahoma.

[Endorsed:] No. 642. Jennie Lee Williams *et al.*, Plaintiffs in Error, *vs.* First National Bank of Pauls Valley, Defendant in Error. Writ of Error. Filed Mar. 27, 1908. W. H. L. Campbell, Clerk Supreme Court.

10 In the United States Court *for* Appeals for the Indian Territory, Sitting at South McAlester, I. T.

JENNIE LEE WILLIAMS ET AL., Plaintiffs in Error,

vs.

THE FIRST NATIONAL BANK, PAULS VALLEY, Defendant in Error.

Action on Promissory Note.

Appeal from the United States Court for the Southern District, Indian Territory, Sitting at Purcell, I. T.

Counsel for plaintiffs in error, Messrs. Geo. M. Miller and Herbert, Dolman & Cannon.

Counsel for defendant in error, Messrs. D. Carter and Ledbetter, Bledsoe & Thompson.

11 *Transcript of Record on Writ of Error.*

UNITED STATES OF AMERICA,
Indian Territory, Southern Judicial District:

Record of the proceedings of the United States Court within and for the Southern Judicial District of the Indian Territory, in the cause and matter herein after stated, and the same being disposed of at the regular term of said Court begun and held in the city of Purcell, in said District, on the second Monday in April, being the 10th day of said month, in the year of our Lord, one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and twenty-ninth to-wit, on the 12th, 14th and 19th days of April.

Present: The Honorable Hosea Townsend, Judge United States Court, Southern Judicial District, Indian Territory.

No. 762. At Law.

JENNIE LEE WILLIAMS ET AL., Plaintiffs in Error,

vs.

FIRST NATIONAL BANK, PAULS VALLEY, Defendant in Error.

Said action was commenced on the 29th day of June, A. D. 1904, and proceeded to final disposition at the term and day above written and during the progress thereof pleadings and papers were filed, process was issued and returned, and orders of the Court made and entered in the order and on the dates hereinafter stated, to-wit:—

12 THE UNITED STATES OF AMERICA:

The President of the United States of America, to the Judge of th United States Court, for the Southern District of the Indian Te ritory, Greeting:

Because in the records and proceedings, and also in the renditio of the judgment of a plea which is in the said United States Cou for the Southern District of the Indian Territory, before you, be tween the First National Bank of Pauls Valley, Indian Territor plaintiff, and Jennie Lee Williams, S. L. Williams and S. T. Williams defendants, a manifest error has happened, — the *the* great damag of the said Jennie Lee Williams, S. L. Williams and S. T. Williams as by their complaint appears. We being willing that the error, i any has been, should be duly corrected, and full and speedy justic done to the parties, aforesaid in this behalf, do command you, i judgment be therein given, that under your seal, distinctly an openly you send the record and proceedings aforesaid, with al things concerning the same to the United States Court of Appeal for the Indian Territory, together with this writ, so that you may have the same at the city of South McAlester, Indian Territory o the 13th day of June, next, in the said Court of Appeals, to be ther and there held, that the record and proceedings being inspected, th said Court of Appeals may cause further to be done to correct tha error, what of right, and according to the laws and customs of th United States, should be done.

Witness the Honorable Charles W. Raymond, Chief Justice o said Court of Appeals for the Indian Territory, the 19th day o April, 1905, in the year of our Lord, one thousand nine hundre and five, and of the Independence of the United States of America

[SEAL.] C. M. CAMPBELL,
Clerk of the United States Court,
Southern District, Indian Territory.
By T. F. GREEN, *Deputy Clerk.*

13 *Certificate and Return of Writ of Error.*

UNITED STATES OF AMERICA,
Indian Territory, Southern Judicial District, ss:

In pursuance of the command of the Writ of Error within, I, C. M. Campbell, Clerk of the United States Court within and for the Southern Judicial District, Indian Territory, herewith transmit a true copy of the record, Assignment of Errors and all proceedings in this case, of First National Bank, Pauls Valley, Indian Territory *vs.* Jennie L. Williams, S. L. Williams, and S. T. Williams, lately pending in the United States Court for the Southern Judicial District of the Indian Territory, at Purcell, Indian Territory, under my hand and seal of said Court.

Witness my official signature, and the seal of said District Court at the City of Purcell, in said District, this 6" day of June, A. D.

1905, and of the Independence of the United States of America the one hundred and twenty-ninth.

[SEAL.]

C. M. CAMPBELL,
Clerk of U. S. Court, Southern Judicial District, Indian Territory.
By T. F. GREEN, *Deputy.*

14 Endorsed on back as follows:

No. 762. First National Bank of Pauls Valley, I. T., Plaintiff, *vs.* Jennie Lee Williams *et al.*, Defendants. Writ of Error. Filed in open Court. April 19, 1905. C. M. Campbell, Clerk. By ——— ———, Deputy.

15 In the United States Court for the Southern District of the Indian Territory, at Purcell.

THE FIRST NATIONAL BANK OF PAULS VALLEY, I. T., Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

The plaintiff, The First National Bank of Pauls Valley, Indian Territory, complaining of the defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams, respectfully shows to the court that the plaintiff is a National Bank, duly organized and authorized under the laws of the United States relating to the organization of National Banks; that — is located at Pauls Valley in the Southern District of the Indian Territory, and engaged in the banking business; that the defendants reside in the Southern District of the Indian Territory, and nearer to the town of Purcell than any other place in said district where a session of this court is held.

For cause of action plaintiff alleges and shows to the court that heretofore, to wit, on the 4th day of February, 1904, the defendants executed and delivered unto Susan E. Mays their promissory note for the principal sum of Five Thousand Dollars ($5000.00) due ninety (90) days from date; that the said note is in words and figures as follows, to wit:—

"TISHOMINGO, IND. TER., *Feb. 4th*, 1904.

Ninety (90) days from date, without grace, we, or either of us jointly and severally promise to pay to the Order of Susan E. Mays, Five Thousand and 00 100 Dollars, for value received, at First National Bank of Pauls Valley, Ind. Ter. with interest at the rate of 8% *per cent.* per annum from date until paid.

"All principal or interest not paid when due shall bear interest at 10 per cent. per annum and failure to pay interest when due shall cause the whole of note to become due and collectable at once. Should suit be commenced for the collection of this note, a reasonable amount shall be allowed as attorney's fees and taxes with the costs, whether it go to Judgment or now; and the holder may sell

at public or private sale, without notice, any and all collaterals held as security for this note at any time, and credit proceeds thereof on this note, or collect collaterals by law and apply the proceeds as aforesaid; and the several makers, sureties and endorsers
16 hereto hereby waive appraisement, notice of extension, non-payment and protest and agree that any extension of time made hereon, or renewal hereof, shall not effect their liability, whether they have notice of such extension or renewal or not.

JENNIE LEE WILLIAMS.
S. L. WILLIAMS.
S. T. WILLIAMS."

Witness:
JAMES A. COTNER."

and is endorsed by Susan E. Mays, the payee mentioned therein; the said note was sold and transferred to this plaintiff long before maturity for a valuable consideration; that the plaintiff at the present time is the holder and owner of said note; that the same is long past due and unpaid, although repeated demands have been made upon the defendants, and each of them, for the payment thereof.

Wherefore, premises considered, plaintiff brings this suit and prays that the defendants be summoned to appear and answer herein and that upon a trial it have judgment for the said sum of Five Thousand Dollars ($5000.00), interest, cost, and all proper relief.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Plaintiff.

Endorsed: No. 762. First National Bank of Pauls Valley *vs.* Jennie Lee Williams, S. L. Williams, and S. T. Williams. Complaint at Law. Filed at Purcell June 29, 1904. Chas. M. Campbell, Clerk. By T. F. Green, Deputy.

17 *Service of Summons.*

No. 762.

First National Bank of Pauls Valley, I. T.,
vs.
Jennie Lee Williams et al.

Summons in the above entitled cause, issued on the 29th day of June, A. D. 1904, Signed & sealed, returned and filed July 14th, 1904, endorsed:

"United States of America.
Indian Territory, Southern District, ss:

I received this summons this 1st day of July, A. D. 1904, at 10 o'clock A. M., and served same by copy as follows:—

Personally on S. L. Williams, at Purcell, Ind. Ter., this 5th day of July, 1904, 2 o'clock P. M.

Personally on S. T. Williams, at Purcell, Ind. Ter., this 5th day of July, 1904, 2 o'clock P. M.

Personally on J. L. Williams, at Purcell, Ind. Ter., this 13" day of July, 1904, 10:30 o'clock A. M.

B. H. COLBERT,
U. S. Marshal for the Indian Territory, Southern District.
By L. D. DICKERSON, *Deputy.*"

18 UNITED STATES OF AMERICA, *ss:*

United States Court, Indian Territory, Southern District.

Be it remembered, That at a stated term of the United States Court in the Indian Territory, Southern District, begun and had in the Court Rooms, at Purcell in the Indian Territory on the 5th day of December, A. D. 1904, and of the Independence of the United States of America, the one hundred and twenty-ninth.

Present and presiding: The Honorable J. T. Dickerson, Judge of said Court.

And on said day after Court being opened in due form of law among the proceedings had were the following, to-wit:

No. 762.

FIRST NATIONAL BANK OF PAULS VALLEY
vs.
JENNIE L. WILLIAMS ET AL.

Comes now Jennie L. Williams, S. L. Williams, and S. T. Williams, and file their separate answers herein.

19 In the United States Court, in the Southern District of the Indian Territory, at Purcell.

THE FIRST NATIONAL BANK OF PAULS VALLEY, Plaintiff,
vs.
JENNIE L. WILLIAMS, S. L. WILLIAMS, & S. T. WILLIAMS, Defendants.

Separate Answer of Jennie L. Williams.

Now comes the defendant Jennie L. Williams, and for answer to plaintiff's complaint says that she is and was, at the time of the commencement of this action, a duly enrolled Chickasaw Indian by blood; that she was then and now is a married woman, being the wife of S. L. Williams, a co-defendant herein, and the principal maker of the note sued on in this action, and the said S. L. Williams and S. T. Williams, were and are sureties thereon.

2. This defendant further answering said complaint denies that she is indebted to the said First National Bank in the sum of $5000

or in any other sum whatever; denies that the same was given for any debt or demand concerning here services, any separate business carried on by her, or her separate estate; and that said note is in such terms as create the uncertainty of its ever falling due, in that it may be, as to its payment, extended indefinitely, and the said note went into the possession and control of the plaintiff bank with all its infirmities, and is and was at the institution of this suit, as infirm and worthless as it was when held by the original payee, Mrs. Susan E. Mays.

3. Further answering this defendant denies that she is in any manner liable on the said note for the reason that the same was given for the sole and only consideration founded on the sale of the N. ½ of the N. E. ¼ of the S. E. ¼ of Sec. 16, T. 4 N. R. 2 W. less 1.45 acres for the K. C. & F. S. Ry. and the N. E. ¼ of the N. W. ¼ of the S. E. ¼ Sec. 16 T. 4 N. R. 2 W. and the S. E. ¼ of the N. E. ¼ of the S. E. ¼ of Sec. 16 T. 4 N. R. 2 W., containing 40 acres and being a part of the intended allotment of land to be taken by the said Susan E. Mays who was on the 4th day of February, 1904, and is a duly enrolled member of the Chickasaw Tribe of Indians by blood.

4. This defendant answering further says she has reason to believe and does believe that the plaintiff bank well knew that the sole and only consideration for the said note was the transfer of the above described 40 acres of land in a manner prohibited by law, the same being contrary to Section 16 of the Supplemental Treaty as set forth in Vol. 32 U. S. statutes at large, page 643.

5. This defendant finally avers that she was not competent at the time of the execution and delivery of the note sued on to bind herself or any one else for the payment thereof, for the reason that she was a married woman and incompetent to contract generally, and for the further reason that there was and is a total failure of consideration, the same being founded on the accomplishment of an unlawful purpose, and an illegal transaction.

Wherefore this defendant prays for judgment for her costs, and that she go hence without day.

JENNIE L. WILLIAMS.

Subscribed and sworn to before me this day of December, 1904.

[SEAL.] GEO. M. MILLER,
Notary Public.

Endorsed: #762. First National Bank of Pauls Valley *vs.* Jennie L. Williams *et al.* Separate Answer of Mrs. Jennie L. Williams. Filed in Open Court Dec. 5, 1904. C. M. Campbell, Clerk. By Deputy. Geo. M. Miller, Att'y for Def'ts.

21 In the United States Court in the Southern District of the Indian Territory, at Purcell.

FIRST NATIONAL BANK OF PAULS VALLEY, Plaintiff,
vs.
JENNIE L. WILLIAMS, S. L. WILLIAMS, & S. T. WILLIAMS, Defendants.

Separate Answer of S. L. Williams.

Now comes S. L. Williams, one of the defendants in the above styled action, and for answer to the plaintiff's complaint, says that he is an intermarried citizen, and a duly enrolled member of the Chickasaw Tribe of Indians and the husband of defendant, Jennie L. Williams, the principal maker of the note sued on in this action.

2. This defendant, further answering the said complaint, says that he is, and it was understood by the payee and principal maker of said note at the time of the execution and delivery of the same, that he was a security thereon only, and that the object and purpose of the said note did in no manner concern any interest he had, or might have in the transaction.

3. Further answering, this defendant says that he is not indebted to the said First National Bank of Pauls Valley in any sum whatever and denies that he is indebted to said bank in the sum of $5000, on the note sued on in this action; that said note is indefinite and uncertain in that it may be indefinitely extended and may never become due.

4. This defendant answering further, says that the said note was given in furtherance of selling the N. ½ of the N. E. ¼ of the S. E. ¼ Sec. 16 T. 4 N. R. 2 W. less 1.45 acres for the K. C. & F. S. Ry. and the N. E. ¼ of the N. W. ¼ of the S. E. ¼ of *of* Sec. 16 T. 4 N. R. 2 W. and the S. E. ¼ of N. E. ¼ of S. E. ¼ of Section 16, T. 4 N. R. 2 W. consisting of 40 acres, the same being a part of the intended allotment of Susan E. Mays, a duly enrolled Chickasaw Indian by blood, and contrary to the only manner provided by law for the sale of an allotment or any part thereof by an Indian by blood.

22 5. That the said Susan E. Mays is the original payee of the said note and the said plaintiff well knew at and before the transfer of the said note that the same was founded upon the consideration growing out of a pretended sale of the land hereinbefore described by the said Susan E. Mays to the said defendant, Jennie L. Williams, and that such sale was prohibited by law and not in the power of the said Susan E. Mays to effect.

6. Further answering, this defendant denies his liability on the said note in that there was and is a total failure of consideration therefor the same being made, executed and delivered for the sole and only purpose of effecting a sale of the aforesaid 40 acres of allotted land contrary to the statutes made and provided in such cases. Having fully answered, this defendant prays the court to go hence with his costs.

[SEAL.] S. L. WILLIAMS.

Subscribed and sworn to before me this 5th day of December, 1904.

GEO. M. MILLER,
Notary Public.

Endorsed: #762. First National Bank of Pauls Valley *vs.* Jennie L. Williams *et al.* Separate Answer of S. L. Williams. Filed in Open Court Dec. 5, 1904. C. M. Campbell, Clerk, By T. F. Green Deputy. Geo. M. Miller, Att'y for Def'ts.

23 In the United States Court in the Southern District of the Indian Territory, at Purcell.

FIRST NATIONAL BANK OF PAULS VALLEY, Plaintiff,
vs.
JENNIE L. WILLIAMS, S. L. WILLIAMS, & S. T. WILLIAMS, Defendants.

Separate Answer of S. T. Williams.

S. T. Williams, one of the above named defendants, now comes and says that he is a citizen of the United States and resides at Purcell, and is not an Indian, either by Affinity or consanguinity.

2. And answering the plaintiff's compalint, this defendant says that he is, and it was well known to the payee of the note sued on, at the time of the execution and delivery thereof, that he was security thereon only and that the consideration and purpose of the said note did not in any manner concern any interest he had, or might have in the transaction.

3. Further answering the said compalint, this defendant denies that he is indebted to the said plaintiff in the sum of $5000.00 or in any sum whatever; and denies that he is liable thereon in any capacity manner or purpose, and alleges that the said note is in terms which create an indefinite and uncertain day of payment by extensions thereof to such extent that said note may never fall due.

4. Defendant further denies his liability on the said note for the reason that the sole and only consideration therefor was and is in furtherance of an attempted sale of the forty acres of land described in the answers of his co-defendants herein and which said forty acres were selected by the original payee of the said note as a part of her allotment, she being a Chickasaw Indian by blood, and incompetent to sell the same, in any other manner than that provided by law, as set forth in Vol. 32 U. S. Statutes at Large, page 643, and this transaction was not in compliance therewith.

24 5. Further answering the said complaint, this defendant avers that Susan E. Mays is the original payee of the said note and that said plaintiff well knew, at and before the transfer thereof to the said First National Bank of Pauls Valley, that the said note was founded upon the consideration growing out of a pretended sale of the land described as aforesaid by the said Susan E. Mays,

to the said Jennie L. Williams, and that such sale was prohibited by law and not in the power of the original payee to effect.

6. This defendant further alleges that the said co-defendant Jennie L. Williams was incompetent to bind herself or this defendant, in that she was and is a married woman and was and is incompetent to contract for anything except for her wages, her separate business carries on by her, or for her separate estate, and the said complaint of plaintiff fails to state any one of such exceptions.

7. In a further defense, this defendant alleges that he is not liable on the said note for the reason that there was and is a total failure of consideration, the same being solely for the accomplishment of an unlawful purpose in effecting a sale of Indian land in a manner prohibited by law as hereinbefore stated. Whereof, the premises considered, and the failure of plaintiff's complaint to state a cause of action, this defendant prays for judgment for his costs and that he go hence without day.

S. T. WILLIAMS.

Subscribed and sworn to before me this 3rd day of December, 1904.

[SEAL.] GEO. M. MILLER,
Notary Public.

#762. First Nat'l Bk. of Pauls Valley *vs.* Jennie L. Williams *et al.* Separate Answer of S. T. Williams. Filed in Open Court Dec. 5, 1904. C. M. Campbell, Clerk. By T. F. Green, Deputy. Geo. M. Miller, Att'y for Def'ts.

25 Thereafter, on Friday, December the 9th, A. D. 1904, the same being the 5th day of the regular December, 1904, term of this Court, after Court being opened in due form of law, among the proceedings had were the following, to-wit:

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY.
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the plaintiff herein and filed motion to make defendants' answer filed herein more definite and certain.

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY.
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the Plaintiff herein and filed demurrer to defendants' answer filed in this cause.

26 In the United States Court for the Southern District of the Indian Territory at Purcell.

FIRST NATIONAL BANK, PAULS VALLEY, IND TER., Plaintiff,
vs.
JENNIE L. WILLIAMS, S. L. WILLIAMS, S. T. WILLIAMS, Defendants.

Motion to Make More Definite and Certain.

Now comes the Plaintiff in the above entitled cause and moves the Court to require the Defendants and each of the-, in their separate answers filed herein, to make their answers more definite and certain; in this that the defendants state minutely and in detail what the consideration of the execution of said note was and is.

DORSET CARTER &
LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Plaintiff.

Endorsed: "No. 762. First National Bank of Pauls Valley *vs.* Jennie L. Williams *et al.* Motion to make Answers more definite and Certain. Filed in open Court, Dec. 9," 1904. C. M. Campbell, Clerk.

27 In the United States Court for the Southern District of the Indian Territory at Purcell.

FIRST NATIONAL BANK, PAULS VALLEY, IND TER., Plaintiff,
vs.
JENNIE L. WILLIAMS, S. L. WILLIAMS, S. T. WILLIAMS, Defendants.

Demurrer.

Now comes the plaintiff in the above entitled cause and demurs to the separate answers of each of the Defendants herein, and states that said answers are insufficient in law to constitute a defense to the Plaintiff's cause of action and for this it prays the judgment of the Court.

DORSET CARTER &
LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Plaintiff.

Endorsed: "No. 762. First National Bank of Pauls Valley *vs.* Jennie L. Williams *et al.* Demurrer to answers. Filed in open Court Dec. 9, 1904. C. M. Campbell, Clerk. By T. F. Green, Deputy.

28 Thereafter, to wit on Friday, December the 9th, A. D. 1904, the same being the 5th day of the regular December, 1904, term further proceedings were had in the above entitled cause as follows to-wit:

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Demurrer to Answers Overruled.

At this time comes on *the* be heard the plaintiffs' demurrer to the defendants' answers heretofore filed herein, and the Court after hearing the same and being fully advised in the premises, find that the law is against said demurrer.

It is therefore ordered, that said Demurrer be, and the same is hereby in all things overruled, that plaintiff is granted five days from this date within which to file amended complaint, and the defendants granted until January 9th, A. D. 1905, within which to answer.

29 Thereafter, to wit: On the 6th day of January, A. D. 1905, the plaintiff The First Nati/nal Bank of Pauls Valley, I. T., filed its First Amended Comp*al*int, herein which said Amended Complaint is in words and figures as follows, to-wit:—

30 In the United States Court for the Southern District of the Indian Territory, at Purcell.

THE FIRST NATIONAL BANK OF PAULS VALLEY, IND. TER., Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

First Amended Complaint at Law.

Now Comes the plaintiff, The First National Bank of Pauls Valley, Indian Territory, and filed this, its First Amended Complaint at Law, and complaining of the defendants, Jennie Lee Williams, S. L. Williams, and S. T. Williams, respectfully shows to the Court that the plaintiff is a national bank, duly organized and authorized under the laws of the United States relating to the organization of national banks; that it is located at Pauls Valley, in the Southern District of the Indian Territory, and engaged in the Banking business; that the defendants reside in the Southern District of the Indian Territory, and nearer to the town of Purcell than any other place in said district where a session of this court is held.

For cause of action the plaintiff states that heretofore, to-wit, on the 4th day of February, 1904, the defendants, executed and delivered unto Susan E. Mays the promissory note for the principal sum of Five Thousand Dollars ($5000.00) due ninety (90) days from date; that said note is in words and figures as follows, to-wit:—

"TISHOMINGO, IND. TER., *Feb. 4th*, 1904.

Ninety (90) days from date without grace, we, or either of us, jointly and severally promise to pay to the order of Susan E. Mays, Five Thousand and 00/100 Dollars for value received, at First National Bank of Pauls Valley, Ind. Ter., with interest at the rate of 8% per cent. per annum from date until paid; all principal or interest not paid when due shall bear interest at 10 per cent. per annum and failure to pay interest when due shall cause the
31 whole of note to become due and collectible at once. Should suit be commenced for the collection of this note, a reasonable amount shall be allowed as attorney's fees and taxes with the costs, whether it go to judgment or not; and the holder may sell at public or private sale, without notice, any and all collaterals held as security for this note at any time, and credit proceeds thereof on this note, or collect collaterals by law and apply the proceeds as aforesaid; and the several makers, sureties and endorsers hereto hereby waive appraisement, notice of extension, non-payment and protest and agree that any extension of time made hereon, or renewal hereof shall not effect their liability, whether they have notice of such extension or renewal or not.

(Signed) JENNIE LEE WILLIAMS.
S. L. WILLIAMS.
S. T. WILLIAMS.

(Witness:)
JAMES A. COTNER."

Plaintiff further alleges that Jennie Lee Williams, one of the makers of said note, is a married woman, and the wife of S. L. Williams, another one of the makers of said note.

Plaintiff further alleges and charges the truth to be that the said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; that at the time of the execution of said note, a contest was pending before the Commission to the Five Civilized Tribes, which said body at said time had authority under law, to entertain and hear the same between the said Jennie Lee Williams, one of the makers of said note, and Susan E. Mays, the payee therein, to determine which of the said parties had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; that said was executed by the said Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the abandoning of said contest by the said Susan E. Mays the payee therein, that after said note was executed the said Susan E. Mays did abandon her contest, and permit the said Jennie Lee Williams to take the said land in allotment, which she did, and the said land thereby became and is her separate property.

Plaintiff further represents that said note has been endorsed and transferred to it by the said Susan E. Mays for a valuable consideration the payee mentioned therein, and it is now the legal and equitable owner and holder of said note, and the same is long past due and unpaid, although repeated demands have been made
32 upon the defendants for the payment thereof.

Wherefore, premises considered, plaintiff brings this suit

and asks that the defendants be summoned to appear and answer herein, and that upon a trial it have judgment for the said sum of Five Thousand Dollars ($5000.00) interest, cost of this suit, and all proper relief.

DORSET CARTER &
LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Plaintiff.

Endorsed: No. 762. First National Bank of Pauls Valley, Ind. Ter., *vs.* Jennie Lee Williams, S. L. Williams, and S. T. Williams. First Amended Complaint at Law. Filed at Purcell, Jan. 6, 1905. Chas. M. Campbell, Clerk. By T. F. Green, Deputy.

33 And, thereafter, to wit: On the 26th day of January, A. D. 1905, the Defendants, Jennie Lee Williams, *et al.*, file their Demurrer to Plaintiff's First Amended Complaint herein, which said Demurrer is in words and figures as follows, to-wit:—

34 In the United States Court in the Southern District of the Indian Territory, at Purcell.

THE FIRST NATIONAL BANK OF PAULS VALLEY, IND TER., Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

Demurrer to 1st Amended Complaint.

Now comes the above named defendants and demur to the First Amended Complaint of plaintiff for the following reasons, to-wit:

1st. Because the said amended complaint does not state facts sufficient to constitute a cause of action; and does not entitle plaintiff to the relief prayed for.

2nd. Because the transferee of a nonnegotiable note must aver and prove consideration for the transfer; and the note in suit is nonnegotiable, and plaintiff fails to aver any consideration whatever for the transfer.

3rd. Because Section 16 of the Atoka Agreement provides the only legal way Indian Lands may be sold, and where a statute positively declares a thing cannot be done, the law will not suffer its policy and purpose to be thwarted by any subterfuge, or ingenious contrivance clother with the semblance of legality. This was a short-cut attempt to sell 40 acres of land, title to which was in the Indians.

4th. Because the Dawes Commission had exclusive jurisdiction to determine all matters in controversy between members of the tribes as to their right to select particular tracts of land for allotment, and to determine the rights, if any of Mrs. Susan Mays in the contest for said 40 acres of land; but the original payee of the note sued on, for a bare promise violated the law in such case made and provided.

JENNIE LEE WILLIAMS ET AL.,
By GEO. M. MILLER, *Their Atty.*

35 Endorsed: #762. 1st National Bank of Pauls Valley *vs.* Jennie Lee Williams, *et al.* Demurrer to 1st Amended Complaint. Filed at Purcell Jan. 26, 1905, Chas. M. Campbell, Clerk. By T. F. Green, Deputy.

36 UNITED STATES OF AMERICA, *ss:*

United States Court, Indian Territory, Southern District.

Be it remembered, that a stated term of the United States Court in the Indian Territory, Southern District, begun and had in the Court Rooms at Purcell, in the Indian Territory on the 13th day of February, A. D. 1905, and of the Independence of the United States of America the one Hundred and twenty-ninth.

Present and presiding: The Honorable Hosea Townsend, Judge of the said court.

Thereafter, to-wit: On *Thes*day, February 21st, A. D. 1905, the same being the 8th day of the regular February, 1905, term of said Court, after Court being opened in due form of law amo*unt* the proceedings had were the following to-wit:—

No. 762.

FIRST NATIONAL BANK OF PAULS VALLEY
vs.
JENNIE L. WILLIAMS ET AL.

Demurrer to Amended Complaint Overruled.

Comes on now to be heard, the defendants' demurrer to plaintiffs' amended complaint filed herein and the Court being well advised in the premises finds that the law is against said demurrer.

It is therefore ordered, That said demurrer in all things be overruled to which *fu*ling of the Court the defendants then and there in open Court excepted.

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

37 On motion of defendants made in open Court, they are allowed fifteen days from this date within *to* which to file answers or plead herein and the case continued for the term.

Thereafter to-wit, on Monday March 6th, A. D. 1905, comes the Defendants, by their attorneys, and file their Demurrer to the First Amended Complaint filed herein, which said Demurrer is in words and figures as follows:—

38 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762.

THE FIRST NATIONAL BANK OF PAULS VALLEY, INDIAN TERRITORY, Plaintiff,

vs.

JENNIE L. WILLIAMS ET AL.

Demurrer to First Amended Complaint.

And now come the defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams, by their attorneys and demur to the first amended complaint of the plaintiff filed herein January 6, 1905, and they say that said complaint does not state facts sufficient to constitute a cause of action against them or either of them and of this they pray the judgment of the Court.

And still further and specially excepting and demurring to said complaint they say the same is insufficient in law:

First. Because it appears from the allegations in said complaint that the note sued on herein and for the amount and accrued interest of which the plaintiff seeks a judgment against the defendants, was executed pursuant to an alleged contract entered into by and between the defendant, Jennie Lee Williams and Susan E. Mays, in that said complaint shows that the sole and only consideration of said note was the agreement of the said Susan E. Mays to abandon a certain contest which she had instituted against the said defendant, Jennie Lee Williams, before the Commission to the Five Civilized Tribes at Tishomingo wherein she claimed the right to select as a part of her allotment certain premises which had been filed on and selected by the said Jennie Lee Williams as a member of the tribe of Chickasaw Indians.

Second. Said complaint upon its face shows that the said note was executed by the defendants to the said Susan E. Mays for an illegal consideration and was executed without any consideration whatever, and of all this the defendants pray the judgment of the Court.

39 GEO. M. MILLER, AND
HERBERT, DOLMAN & CANNON,
Attorneys for Defendants.

Endorsed: No. 762. The First National Bank of Pauls Valley, Indian Territory Plaintiff *vs.* Jennie Lee Williams, Defendants. Demurrer to First Amended Complaint. Filed Mar. 6, 1905. Chas. M. Campbell, Clerk.

40 And, thereafter, to wit, On the same day the Defendants by their Attorneys file their Answer to the First Amended Complaint filed herein, which said Answer is in words and figures as follows:—

41 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762.

FIRST NATIONAL BANK OF PAULS VALLEY, INDIAN TERRITORY, Plaintiff,

vs.

JENNIE LEE WILLIAMS ET AL., Defendants.

Answer to First Amended Complaint.

And now comes the Defendants, Jennie Lee Williams, S. L. Williams, and S. T. Williams, and for answer to the Plaintiff's first amended complaint filed against them herein on the 6th day of January, 1905, they admit that the Plaintiff, The First National Bank of Pauls Valley, Indian Territory, is a National Bank duly organized and authorized under the laws of the United States relating to the organization of National Banks and that said Bank is located at Pauls Valley, in the Southern District of the Indian Territory, and is engaged in the banking business, and they admit that the Defendants reside in the Southern District of the Indian Territory and nearer to the town of Purcell than any other place in said District where a term of the above named Court is held.

The defendants admit that heretofore to wit, on the 4th day of February, 1904, they executed and delivered unto Susan E. Mays their promissory note for the principal sum of Five Thousand Dollars, due ninety days from date and they admit that said note as so executed is copied in the Plaintiffs' first amended Complaint, and that the same is witnessed by James A. Cotner and they admit that the Defendant, Jennie Lee Williams, is a married woman and the wife of the Defendant, S. L. Williams, but they allege and charge that said note was executed by Jennie Lee Williams, as principal and by S. L. Williams and S. T. Williams as sureties.

These Defendants deny, as alleged in the Complaint, that said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; but they admit that at the time of the execution of the said note a contest was pending before the Com-

42 mission to the Five Civilized Tribes between Susan E. Mays as contestant and Jennie Lee Williams as contestee, and that the purpose of said contest as instituted by the said Susan E. Mays was to determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; but these Defendants deny that said note was executed by the said Defendants, Jennie Lee Williams, S. L. Williams, and S. T. Williams, in consideration of the withdrawal of the said Mrs. Susan E. Mays from said contest, as aforesaid; and they deny that the said Susan E. Mays did *withdraw* her contest and permit the said Jennie Lee Williams, to take the said Lands in allotment and that by reason of the withdrawal of the said Susan

E. Mays from said contest that the said land became and was separate property of the Defendant, Jennie Lee Williams.

But these Defendants allege and charge the truth to be that the sole and only consideration of said note as aforesaid, was the pretended and illegal sale of certain lands situated near Maysville in the Chickasaw Nation, Indian Territory, by the said Susan E. Mays to the said Jennie Lee Williams; that said pretended sale was illegal, fraudulent and void; that the same was made in violation of the laws and treaties entered into between the United States and the Choctaw and Chickasaw Tribes of Indians and ratified by said tribes; that said sale was *malum prohibitum; malum in se* and contrary to public policy and was void from the date of the execution of said pretended sale and by reason thereof no consideration passed between the said Susan E. Mays and Jennie Lee Williams for said note sued on as aforesaid. A copy of said pretended conveyance is hereto annexed marked "Exhibit A" and made a part hereof.

And now having fully answered herein the said Defendants put themselves upon the country and pray the judgment of the Court that they be discharged with their costs.

GEO. M. MILLER AND
HERBERT, DOLLMAN, & CANNON,
Attorneys for Defendants.

43 Jennie Lee Williams, S. L. Williams and S. T. Williams upon oath State they are Defendants in the above entitled and numbered cause and that the statements therein contained are true as they verily believe.

JENNIE LEE WILLIAMS.
S. L. WILLIAMS.
S. T. WILLIAMS.

Subscribed and sworn to before me this 8th day of March, 1905.
[SEAL.] GEO. M. MILLER.
Notary Public, Southern District, Indian Territory.

EXHIBIT "A."

TISHOMINGO, INDIAN TERRITORY, *February* 1st, 1904.

Know all men by these presents:

That I, Susan E. Mays, of Maysville, Indian Territory, for and in consideration of the sum of One Dollar, ($1), cash in hand to me this day paid by Samuel L. Williams, Jennie Lee Williams and receipt of which money is hereby acknowledged, And the further consideration of the sum of Five Thousand Dollars, ($5000.) to be paid me by said Samuel L. Williams, Jennie Lee Williams, on the 4th day of Macy, 1904, which indebtedness is evidenced by a promissory note of even date herewith, due on the 4th day of May, 1904, bearing interest at the rate of eight per cent. per annum from date, signd by S. L. Williams, Jennie Lee Williams and S. T. Williams, I hereby bargain, sell, and convey and relinquish all my right, title

or claim which I have in any way in and to the possession of the lands and improvements situated upon the N. ½ of the N. E. ¼ of the E. E. ¼ of Sec. 16; and the N. E. 4 of the N. W. 4 of the S. E. 4 Section 16, and the S. E. 4 of the N. E. 4 of the S. E. 4 of Section 16 all in Township 4 N., Range 2 W. Chickasaw Nation, Indian Territory.

44 Relinquishing unto the said Samuel L. Williams and Jennie L. Williams all rights which I have in and to the proceeds due or to become due, or from the sales of town property, or my interests in the said townsite, located on the above described premises. Hereby relinquishing to them any claim that I have by any former agreements pertaining to any townsite on said lands above described.

Witness my hand on this the 4th day of February, 1904.

SUSAN E. MAYS.

INDIAN TERRITORY, *Southern District:*

On the 4th day of February, 1904, before me a Notary Public, in and for the Southern District of Indian Territory, on this day personally appeared Susan E. Mays, to me personally well known to be the person, who executed the above and foregoing instrument and acknowledged to me that she executed the same for the purposes uses and consideration expressed and set forth.

In evidence herein I hereto set my hand and official seal the day and year last above written.

[SEAL.] JAMES A. COTNER,

Notary Public, Indian Territory, Southern District.

Endorsed: No. 762. The First National Bank of Pauls Valley, Indian Territory, Plaintiff, *vs.* Jennie Lee Williams, *et al.* Defendants. Answer to first Amended Complaint. Filed Mar. 6th, 1905. Chas. M. Campbell, Clerk.

45 UNITED STATES OF AMERICA, *ss:*

United States Court, Indian Territory, Southern District.

Be it remembered, that at a stated term of the United States Court in the Indian Territory, Southern District, begun and had in the Court rooms at Purcell, in the Indian Territory, on the 10th day of April, A. D. 1905, and of the Independence of the United States of America, the one hundred and twenty-ninth.

Present and presiding: The Honorable Hosea Townsend, Judge of said Court.

Thereafter, to-wit—On Wednesday, April 12th, 1905, the same being the Third day of the regular April, 1905, Term of said Court, after Court being opened in due form of law, among the proceedings had were the following, to-wit:—

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Comes Now the Plaintiff and files demurrer to Defendant's answer filed herein.

46 In the United States Court for the Southern District of the Indian Territory, at Purcell.

FIRST NATIONAL BANK OF PAULS VALLEY, IND. TER., Plaintiff,
vs.
JENNIE L. WILLIAMS ET AL., Defendants.

The Plaintiff demurs to the answer of the defendants herein and says that the same is insufficient and constitutes no defense to plaintiff's cause of action as set forth in its complaint.

Plaintiff further specially demurs to that part of Defendant's answer in which they seek to assert the illegality of the note by such denunciatory statements that the same is illegal, fraudulent and void, *malum prohibitum, malum in se*, because the same sets out no facts in whole or in part to the Plaintiff's cause of action as set forth in its complaint.

Plaintiff further demurs to the Latin words and phrases contained in said answer because under the law pleadings are required to be in English language.

Upon all of which it prays the Judgment of the Court, and that it have judgment according to its amended complaint herein.

DORSET CARTER,
LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Plaintiff.

Endorsed: "No. 762. First National Bank of Pauls Valley, Plaintiff, *vs.* Jennie L. Williams, *et al.* Defendants. Demurrer to Answer. Filed in open court Apr. 12, 1905. C. M. Campbell, Clerk.

47 Thereafter, to wit on this same day, further proceedings were had in the above entitled cause as follows, to-wit:—

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

At this time comes on to be heard the Plaintiffs' demurrer to amended answer of Defendants to Plaintiffs' first amended complaint, for reasons therein stated, and at the same time comes the Defendants by Counsel and confess the special demurrer in so far

as it raises the objection that a portion of Defendant's answer is not in the English Language, and asks leave to amend said answer which request is by the Court hereby granted.

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the Defendants herein and file amended answer to first amended complaint filed herein.

48 In the United States Court for the Southern District of the Indian Territory, at Purcell.

FIRST NATIONAL BANK OF PAULS VALLEY, INDIAN TERRITORY,
Plaintiff,
vs.
JENNIE LEE WILLIAMS ET AL., Defendants.

Amended Answer to First Amended Complaint.

And now come the Defendants, Jennie Lee Williams, S. L. Williams, and S. T. Williams, and for answer to the Plaintiff's first amended complaint filed against them herein on the 6th day of January, 1905, they admit that the Plaintiff, The First National Bank of Pauls Valley, Indian Territory, is a National Bank duly organized and authorized under the Laws of the United States relating to the organization of National Banks and that said Bank is located at Pauls Valley in the Southern District of the Indian Territory, and is engaged in the banking business and they admit that the Defendants reside in the Southern District of the Indian Territory, and nearer to the Town of Purcell, than any other place in said district where a term of the above named Court is held.

1st. The Defendants admit that heretofore, to-wit, on the 4th day of February, 1904, they executed and delivered unto Susan E. Mays their promissory note for the principal sum of Five Thousand Dollars due ninety days from date, and they admit that said note, as so executed is copied in the Plaintiff's first amended Complaint, and that the same is witnessed by James A. Cotner and they admit that the Defendant, Jennie Lee Williams, is a married woman and the wife of the Defendant S. L. Williams, but they allege and charge that said note was executed by Jennie Lee Williams, as principal, and S. L. Williams and S. T. Williams as sureties.

49 These Defendants deny, as alleged in the complaint, that said note was executed by the said Jennie Lee Williams, for the benefit of her separate estate; but they admit that at the time of the execution of the said note a contest was pending before the Commission to the Five Civilized tribes between Susan E. Mays, as contestant, and Jennie Lee Williams, as contestee, and that the purpose of said contest, as instituted by the said Susan E. Mays, was to

determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; but these Defendants deny that said note was executed by the said Defendants, Jennie Lee Williams, S. L. Williams, and S. T. Williams, in consideration of the withdrawal of the said Mrs. Susan E. Mays from said contest, as aforesaid; and they deny that the said Susan E. Mays did withdraw her contest and permit the said Jennie Lee Williams to take the said lands in allotment; and that by reason of the withdrawl of the said Susan E. Mays, from said contest that said land became and was the separate property of the said Defendant, Jennie Lee Williams; But Defendants allege and charge the truth to be that since the execution and delivery of said note as aforesaid, that said Commission aforesaid, has duly awarded and delivered to said Defendant Jennie Lee Williams, certificate to said land.

2nd. But these Defendants allege and charge the truth to be that sole and only consideration of said note, as aforesaid, was the pretended and illegal sale of certain lands situated near Maysville in the Chickasaw Nation, Indian Territory, by the said Susan E. Mays to the said Jennie Lee Williams; that said pretended sale was illegal fraudulent and void; that the same was made, executed and delivered by said Susan E. Mays to said Jennie Lee Williams, in violation of and in contravention of the provisions of a treaty made by and between the United States and the Chickasaw and Choctaw tribes of Indians in the year 1902, which said treaty was ratified by a majority vote of said tribes and by Act of the Congress of the United States; and in violation of and in contravention of the provisions of a treaty of the United States and the said tribes of Indians made, concluded and ratified by said tribes and the Congress of the United States in the year, 1898, and known as the "Atoka Agreement;" and that by reason thereof said pretended conveyance from said Susan E. Mays to said Jennie Lee Williams, is illegal, fraudulent and void, and of no effect and that by reason of the premises, aforesaid, the said note herein sued for, when executed, was and hitherto since has been illegal and void, and without consideration—a copy of said conveyance is hereto annexed and marked "Exhibit A" and made a part hereof;

3rd. And still further answering herein the Defendants say that the plaintiff ought not further prosecute and maintain this action against them, Because, they allege and charge that at the date of the execution of said conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, as aforesaid, said Susan E. Mays did not have the possession right or title to the premises, in said conveyance described, and did not own the improvements situated thereon, and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note herein sued on for that reason has totally failed; all of which the Defendants are prepared and willing to verify and they put themselves upon the country and pray the judgment of the Court that they be discharged with their costs.

GEO. M. MILLER AND
HERBERT, DOLMAN & CANNON,
Attorneys for Defendants.

Jennie Lee Williams, S. L. Williams, and S. T. Williams, each for himself upon oath states that he is Defendant in the foregoing answer, and that the statements therein contained are true as he verily believes.

JENNIE LEE WILLIAMS.
S. L. WILLIAMS.
S. T. WILLIAMS.

Subscribed and sworn to before me this 12" day of April, 1905.
[SEAL.] C. E. STICKLEY,
Notary Public, Southern District Ind. Ter.

51 "EXHIBIT A."

TISHOMINGO, INDIAN TERRITORY, *February 4th*, 1904.

Know all men by these presents:

2 That I, Susan E. Mays of Maysville, Indian Territory, for and in consideration of the sum of One Dollar ($1) cash in hand to me this day paid, by Samuel L. Williams and Jennie Lee Williams the receipt of which money is hereby acknowledged and the further consideration of the sum of Five Thousand Dollars ($5000.00) to be paid by said Samu*le* L. Williams, and Jennie Lee Williams on the 4th day of May, 1904, which indebtedness is evidenced by a promissory note of even date herewith, due on the 4th day of May, 1904, bearing interest at the rate of eight per cent. per annum from date, signed by S. L. Williams, Jennie Lee Williams and S. T. Williams, I hereby bargain, sell and convey and relinquish all my right, title, or claim which I have in any way in and to the possession of the lands and improvements situated upon the N. /2 of the N. E. /4 of the S. E. /4 of Sec. 16 and the N. E. /4 of the N. W. /4 of the S. E. /4 Sec. 16; and the S. E. /4 of the N. E. /4 of the S. E. /4 of Sec. 16, all in Township 4 N. Range 2 W. Chickasaw Nation, Indian Territory.

Relinquishing unto the said Samuel L. Williams and Jennie Lee Williams, all rights which I have in and to the proceeds due or to become due, or from the sales of town property, or my interest in the said townsite located on the above described premises. Hereby relinquish- to them any claim that I have by any former a*f*reements pertaining to any townsite on said lands above described.

Witness my hand this the 4th day of February, 1904.

SUSAN E. MAYS.

INDIAN TERRITORY, *Southern District:*

On this fourth day of February, 1904, before me, a Notary Public, in and for the Southern District of the Indian Territory on this day personally appeared Susan E. Mays, to me personally well known to be the person who executed the above and fore-
52 going instrument, and acknowledged to me that she executed the same for the purpose, uses and considerations expressed and set forth.

In evidence herein, I hereunto set my hand and official seal the day and year last above written.

[SEAL.] JAMES A. COTNER,
Notary Public, Southern District Indian Territory.

Endorsed: "No. 762. First National Bank of Pauls Valley, I. T., *vs.* Jennie Lee Williams, *et al.*, Amended answer to First Amended Complaint. Filed in open Court Apr. 12", 1905. C. M. Campbell, Clerk.

53 Thereafter, to-wit:—On Friday, April the 14th, A. D. 1905, the same being the fifth day of the regular April, 1905, term of said Court, after Court being opened in due from of law among the proceedings had were the following, to-wit:—

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the plaintiff and files demurrer to defendants' amended answer to First Amended Complaint herein.

54 In the United States Court for the Southern District of the Indian Territory, at Purcell.

#762.

FIRST NATIONAL BANK OF PAULS VALLEY, INDIAN TERRITORY,
Plaintiff,
vs.
JENNIE LEE WILLIAMS ET AL., Defendants.

Demurrer to Amended Answer to First Amended Complaint.

1st. The plaintiff demurs to the answer of the defendants herein and for cause says that the same is insufficient and constitutes no defense to plaintiff's cause of action herein.

2nd. The plaintiff further specially demurs to the following part of paragraph one of said answer, to-wit:—"The defendants deny, as alleged in the complaint, that said note was executed by the said Jennie Lee Williams for the benefit of her separate estate" because it appears from the facts set forth in said answer that the same is only a conclusion of law and the same was executed for the benefit of the estate of the said Jennie Lee Williams.

3rd. The plaintiff further specially demurs to the following part of paragraph one of the defendants' answer herein, to-wit:—"These defendant- deny that said note was executed by the said defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the withdrawal of the said Mrs. Susan E. Mays from said

contest, as aforesaid; and they deny that the said Susan E. Mays did withdraw her contest and permit the said Jennie Lee Williams to take the said lands in allotment; and that by reason of the withdrawal of the said Susan E. Mays from said contest that said land became and was the separate property of the said defendant, Jennie Lee Williams" for the reason that the denial of a withdrawal is immaterial and does not deny the allegations contained in the complaint and is drawn in such form and that by being joined to
55 the other clauses it does not amount to a denial of any of the facts contained in said complaint.

4th. Plaintiff further specially demurs to the second paragraph of the said answer because the same states only a conclusion of law, states no fact whatever, and it does not state a defense to the plaintiff's cause of action or any part thereof.

5th. Plaintiff further specially demurs to the third paragraph of said answer because the matters therein set forth are wholly irrelevant, and immaterial to the issues and constitutes no defense to plaintiff's cause of action, or any part thereof.

Upon all of which this plaintiff prays the judgment of the Court.

DORSET CARTER,
LEDBETTER & BLEDSOE,
Attorneys for Plaintiff.

Endorsed: #762. First National Bank of Pauls Valley, Indian Territory, Plaintiff, *vs.* Jennie Lee Williams, *et al.*, defendants. Demurrer to Amended Answer to First Amended Complaint. Filed in Open Court Apr. 14, 1905, C. M. Campbell, Clerk. By T. F. Green, Deputy.

56 Thereafter, to-wit:—On Friday, April the 14th A. D. 1905, the same being the fifth day of said term, further proceedings were had in the above entitled cause as follows, to-wit:—

No. 762.

First National Bank, Pauls Valley,
vs.
Jennie L. Williams et al.

Demurrers to First Amended Complaint, Overruled.

On this 14th day of April, 1905, in open Court came on to be heard the general and special demurrers of the Defendants to the Plaintiff's first amended Complaint, filed herein on January 6th, 1905, and the Court after hearing the same, argument of Counsel, and being fully advised in the premises is of the opinion that the said demurrers should be and the same are hereby overruled and denied; to which ruling of the court the Defendants in open Court duly except.

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Judgment.

On this 14th day of April, 1905, in open Court came on to be heard the Plaintiff's general and special demurrers to the amended answer of the Defendants to first amended complaint filed herein April 12th, 1905, and the Court after hearing said demurrers argument of counsel and being fully advised in the premises, is of the opinion that said demurrers should be and the same are hereby sustained, to which ruling of the Court the Defendants in open court duly excepted.

And said Defendants, in open court, having declined to amend their answer and elect to stand upon said answer and refus/ to plead further.

It is therefore considered and adjudged by the Court, that The First National Bank of Pauls Valley, a corporation under the banking laws of the United States, do have and recover of and from the Defendants, Jennie Lee Williams, as principal, and S. L. Williams, and S. T. Williams sureties the full sum of Five Thousand,
57 five hundred seventy two Dollars ($5572.00) with interest thereon from this date until paid at the rate of ten per cent. (10%) per annum, and the costs of this action; for all of which let execution issue. To which judgment of the court the defendants, in open court, duly excepted.

58 Thereafter, to wit, on Wednesday, April 19th, 1905, the same being the 9th day of the regular April, 1905, term of said Court, after Court being opened in due form of Law, among the proceedings had were the following, to-wit:—

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the Defendants herein and file Petition for a Writ of Error.

59 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762. At Law.

FIRST NATIONAL BANK OF PAULS VALLEY, a Corporation, Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

Petition for a Writ of Errors.

Now come Jennie Lee Williams, S. L. Williams and S. T. Williams, Defendants herein, and say that on or about the 14" day of April, 1905, this court rendered judgment herein in favor of the plaintiff and against these defendants in which judgment and the proceedings had prior thereto certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the defendants pray that a writ of error may issue in their behalf out of the United States Court of Appeals for the Indian Territory, for the correction of errors so complained of and that a transcript of the record proceedings and papers in this cause duly authenticated may be sent to the United States Court of Appeals.

GEORGE M. MILLER AND
HERBERT, DOLMAN & CANNON,
Attorneys for Defendants.

Endorsed: No. 762. First National Bank of Pauls Valley, I. T., Plaintiff, *vs.* Jennie Lee Williams, *et al.*, Defendants. Petition for Writ of Error. Filed in Open Court Apr. 19, 1905. C. M. Campbell, Clerk. By T. F. Green, Deputy.

60 Thereafter, to wit, on this same day further proceedings were had in this cause as follows, to wit:—

No. 762.

FIRST NATIONAL BANK, PAULS VALLEY,
vs.
JENNIE L. WILLIAMS ET AL.

Comes now the Defendants herein and file their assignment of Errors.

61 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762. At Law.

THE FIRST NATIONAL BANK OF PAULS VALLEY, INDIAN TERRITORY, Plaintiff,

vs.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

Assignment of Errors.

The defendants in this action in connection with their petition for a writ of error, make the following assignment of errors which they aver occurred upon the trial of the above named cause, to-wit:—

1. The court erred in overruling and denying the general and special demurrers of the defendants to the plaintiff's first amended complaint for the reasons stated in said demurrers, the said amended complaint upon its face having shown that the plaintiff seeks judgment against defendants upon an illegal and void contract.

2. The court erred in sustaining the general and special demurrers of the plaintiff to the amended answer of defendants to the first amended complaint and in dismissing this cause from the docket of the court in that the said amended answer contains statements constituting a good and valid defense to the plaintiff's alleged cause of action as shown by its first amended complaint.

3. The court erred in sustaining the plaintiff's general and special demurrers to paragraph three of the defendants' amended answer to the first amended complaint, in that, in said paragraph the defendants state that *the* the execution of the conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, that the said Susan E. Mays did not have the possession, right or title to the premises described in said conveyance and did not own the improvements situated thereon and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note sued on for that reason, totally failed.

62 4. The Court erred in rendering judgment in favor of plaintiff and against defendants for the sum of Five Thousand Five Hundred and Seventy-two Dollars (5,572.00) with interest thereon from the date of said judgment at the rate of ten per-cent. per annum and judgment for the cost of the action and in awarding execution upon said judgment.

Wherefore, the defendants pray that the judgment of the said United States Court for the Southern District of the Indian Territory, at Purcell, be reversed.

GEO. M. MILLER AND
HERBERT, DOLAMN & CANNON.

Endorsed: No. 762. First National Bank of Pauls Valley, I. T., Plaintiffs, *vs.* Jennie Lee Williams, *et al.*, Defendants. Assignment of Errors. Filed in Open Court Apr. 19, 1905. C. M. Campbell, Clerk. By T. F. Green, Deputy.

63 Thereafter, to wit, on Saturday, April 29th A. D. 1905, comes the Defendants herein and file their Appeal Bond, which said Bond is in words and figures as follows, to-wit:—

64 Know all men by these presents,

That we, Jennie Lee Williams, S. L. Williams and S. T. Williams as principals, and the United States Fidelity & Guaranty Company, as sureties, are held and firmly bound unto the First National Bank of Pauls Valley, Indian Territory, in the full and just sum of Six Thousand (6,000) Dollars to be paid to the said, the First National Bank of Pauls Valley, Indian Territory, its successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this the 24th day of April, in the year of our Lord, one thousand nine Hundred and five.

Whereas, lately at the April term of the United States Court for the Southern District of the Indian Territory, sitting at Purcell, in a suit pending in said court between the First National Bank of Pauls Valley Indian Territory, plaintiff and Jennie Lee Wiliams, S. L. Williams, and S. T. Williams, defendants, a judgment was rendered against the said Jennie Lee Williams, as principal and S. L. Williams and S. T. Williams, as sureties, for the sum of Five Thousand Five Hundred and Seventy-two (5,572) Dollars with interest thereon from April 14, 1905, at the rate of ten per cent. per annum and for cost and the said Jennie Lee Williams, S. L. Williams and S. T. Williams have obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit and a citation directed to the said the First National Bank of Pauls Valley, Indian Territory, citing and admonishing it to be and appear in the United States Court of Appeals for the Indian Territory, at the city of South McAlester, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Jennie Lee Williams, S. L. Williams, and S. T. Williams, shall prosecute said writ of error to effect, and answer all damages
65 and costs if they fail to make good their plea then the above obligation to be void, else to remain in full force and virtue

JENNIE LEE WILLIAMS.
S. L. WILLIAMS.
S. T. WILLIAMS.
UNITED STATES FIDELITY & GUARANTY CO.,
By C. E. STICKLEY, *Agent.*
GEO. M. MILLER, *Atty.*

(Seal of Guaranty Co.)

Sealed and delivered in presence of

——— ———.

Approved by
HOSEAL TOWNSEND,
Judge United States Court for the Southern District, Indian Territory.

Endorsed: No. 762. First National Bank of Pauls Valley, I. T., Plaintiff, *vs.* Jennie Lee Williams *et al.*, Defendants. Bond. Filed at Purcell Apr. 29, 1905. Chas. M. Campbell, Clerk, by T. F. Green, Deputy.

66 And now, to wit, on this Wednesday, April 19th, the same being the 9th day of the regular, April, 1905, term of said Court and in open Court the following order was made and entered, to-wit:—

67 In the United States Court for the Indian Territory, Southern District, at Purcell.

No. 762. At Law.

FIRST NATIONAL BANK OF PAULS VALLEY, a Corporation, Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

On this 19 day of April came the defendants herein by their attorneys, and filed herein and presented to the court their petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by them, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Court of Appeals for the Indian Territory, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error upon the defendants giving bond according to law in the sum of $6,000.00 *Dollars* which shall operate as a supersedeas bond.

HOSEA TOWNSEND, *Judge*.

Endorsed: No. 762. First National Bank of Pauls Valley, Plaintiff, *vs.* Jennie Lee Williams *et al.*, Defendants. Order Allowing Writ of Error. Filed in open Court Apr. 19, 1905. C. M. Campbell, Clerk. By T. F. Green, Deputy.

68 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the United States Court for the Southern District of the Indian Territory, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said United States Court for the Southern District of the Indian Territory, before you, between the First National Bank of Pauls Valley, Indian Territory, plaintiff, and Jennie Lee Williams, S. L. Williams, and S. T. Williams, defendants a manifest error has happened, to the great damage of the said Jennie Lee Williams S. L. Williams and S. T. Wil-

liams, as by their complaint appears. We being willing that the error, if any has been should be duly corrected, and full and speedy justice done to the parties, aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Court of Appeals, for the Indian Territory, together with this writ, so that you may have the same at the city of South McAlester Indian Territory on the 13 day of June next, in the said Court of Appeals to be then and there held, that the record and proceedings being inspected, the said Court of Appeals may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Charles W. Raymond, Chief Justice of said Court of Appeals for the Indian Territory, the 19th day of April, 1905, in the year of our Lord, one thousand nine hundred and five, and of the Independence of the United States of America

C. M. CAMPBELL,
Clerk of the United States Court, Southern District Indian Territory.

[SEAL.] By T. F. GREEN, *Deputy Clerk.*

69 *Certificate and Return on Writ of Error.*

UNITED STATES OF AMERICA,
Indian Territory, Southern Judicial District, ss:

In pursuance of the Command of the Writ of Error within, I, C. M. Campbell, Clerk of the United States Court within and for the Southern Judicial District, Indian Territory, herewith transmit a true copy of the record, Assignment of Errors and all proceedings in this case, of First National Bank, Pauls Valley, Indian Territory, *vs.* Jennie L. Williams, S. L. Williams, and S. T. Williams, lately pending in the United States Court for the Southern Judicial District of the Indian Territory, at Purcell, Indian Territory, under my hand and seal of said Court.

Witness my official signature, and the seal of said District Court at the City of Purcell, in said District, this 6th day of June, A. D., 1905, and of the Independence of the United States of America the one hundred and twenty-ninth.

[SEAL.] C. M. CAMPBELL,
Clerk U. S. Court, Southern Judicial District Indian Territory.
By T. F. GREEN, *Deputy Clerk.*

70 Endorsed: No. 762. First National Bank of Pauls Valley, I. T., Plaintiff, *vs.* Jennie Lee Williams *et al.*, Defendants. Writ of Error. Filed in Open Court Apr. 19, 1905. C. M. Campbell, Clerk. By T. F. Green, Deputy.

71 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762.

FIRST NATIONAL BANK OF PAULS VALLEY, a Corporation, Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

UNITED STATES OF AMERICA,
Southern District Indian Territory, ss:

To the First National Bank of Pauls Valley, Indian Territory, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Court of Appeals of the Indian Territory, to be holden at the city of South McAlester, in said territory, upon the 13 day of June next, pursuant, to a writ of error filed in the Clerk's office of the United States District Court for the Southern District of the Indian Territory, sitting at Purcell wherein you are plaintiff in error and Jennie Lee Williams, S. L. Williams and S. T. Williams are defendants in error, to show cause, if any there be, why the judgment rendered against the said defendants in error as in the said writ of errors mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hosea Townsend, Judge of the United States Court for the Southern District of the Indian Territory, at Purcell, within said District, this 19th day of April, A. D., 1905.

[SEAL.] HOSEA TOWNSEND, *Judge.*

Service of above notice is hereby accepted.

LEDBETTER, BLEDSOE & THOMPSON AND
DORSET CARTER, *Attys for Pl'ffs.*

4 29 05.

72 Endorsed: No. 762. First National Bank of Pauls Valley, I. T., Plaintiffs, *vs.* Jennie Lee Williams *et al.*, Defendants. Citation in Error. Filed in Open Court Apr. 19, 1905. C. M. Campbell, Clerk, by T. F. Green, Deputy.

73 In the United States Court for the Southern District of the Indian Territory, at Purcell.

No. 762.

FIRST NATIONAL BANK OF PAULS VALLEY, a Corporation, Plaintiff,
vs.
JENNIE LEE WILLIAMS, S. L. WILLIAMS, and S. T. WILLIAMS, Defendants.

UNITED STATES OF AMERICA,
Southern District Indian Territory, ss:

To the First National Bank of Pauls Valley, Indian Territory, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Court of Appeals of the Indian Territory, to be holden at the city of South McAlester, in said territory upon the 13 day of June, next, pursuant to a writ of error filed in the Clerk's Office of the United States District Court for the Southern District of the Indian Territory, sitting at Purcell wherein you are defendant in error and Jennie Lee Williams, S. L. Williams and S. T. Wililams are plaintiffs in error, to show cause, if any there be, why the judgment rendered against, the said defendants in error as in the said writ of errors mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf

Witness the Honorable Hosea Townsend, Judge of the United States Court for the Southern District of the Indian Territory, at Purcell, within said district, this 19th day of April, A. D., 1905.

[SEAL.] HOSEA TOWNSEND, *Judge.*

Service of above notice is hereby accepted.
LEDBETTER, BLEDSOE & THOMPSON AND
DORSET CARTER, *Att'ys for Pl'ffs.*
4/29/05.

74 No. 762. First National Bank of Pauls Valley, I. T., Plaintiffs, *vs.* Jennie Lee Williams *et al.*, Defendants. Citation in Error. Filed in Open Court Apr. 19, 1905. C. M. Campbell, Clerk, by —— ——, Deputy.

75 *Certificate of Clerk to Transcript of Record on Appeal.*

UNITED STATES OF AMERICA,
Indian Territory, Southern Judicial District, ss:

I, C. M. Campbell, Clerk of the United States Court for the Southern Judicial District of the Indian Territory, do hereby certify and return to the claim of Appeal of Jennie Lee Williams, S. L. Williams and S. T. Williams, in a cause pending in said Court, wherein

The First National Bank of Pauls Valley, Indian Territory, is Plaintiff and Jennie Lee Williams, *et al.*, are Defendants, that the above and foregoing is a true copy of all papers filed and proceedings had and entered in said cause at Purcell, Indian Territory, and that I have compared the same with the originals, and they are *turn* and correct transcripts therefrom and of the whole thereof.

And I further certify that the original Writ of Error and Citation, with the acceptance of service thereof, are returned herewith and made a part hereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Purcell, in said District, this 6th day of June, A. D. 1905, and of the Independence of the United States of America the One hundred and twenty-ninth.

C. M. CAMPBELL,
Clerk U. S. Court, Southern District Indian Territory.
[SEAL.] By T. F. GREEN, *Deputy.*

76 Endorsed on back as follows:

No. 642. Jennie Lee Williams, *et al.*, Appellants, *vs.* First National Bank of Pauls Valley, Appellee. Transcript of Record. Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter., June 9, 1906. Wm. P. Freeman, Clerk.

77 And thereafter on October 27, 1905, the following proceeding was had in said cause, to wit:

#642.

JENNIE LEE WILLIAMS, Appellant,
vs.
FIRST NATIONAL BANK, PAULS VALLEY, Appellee.

This cause is this day submitted on briefs filed, the appellant being granted thirty days to file supplemental brief, and the appellee twenty days thereafter to file supplemental reply brief.

78 And afterwards on the 24th day of December, 1907, a petition for removal of said cause, and bond on same, was filed in said cause, a copy of which is in words and figures as follows, to wit:

79 In the Supreme Court of the State of Oklahoma.

JENNIE LEE WILLIAMS, Appellant,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

Petition for Removal.

Your petitioner, Jennie Lee Williams, respectfully shows the Court that the matter and amounts in dispute in the above entitled

suit exceed, exclusive of interests and costs, the sum, or value, of Two Thousand Dollars, and that said suit is of a civil nature.

That the petitioner, the appellant in the above entitled cause, was at the time of the commencement of this suit a resident and citizen of Pauls Valley, Indian Territory, and is now a resident and a citizen of the City of Purcell, State of Oklahoma.

That the appellee is a national bank, organized and existing under the laws of the United States, and was at the commencement of this suit such a corporation with its principal place of business at Pauls Valley, Indian Territory, and is now doing business at Pauls Valley, Oklahoma.

That the suit herein is of a civil nature at law arising under the Cons-itution and Laws of the United States.

That the said suit involves the construction of the treaties, and laws and Acts of Congress, concerning the allotment *and* of lands to the Choctaw and Chickasaw Tribes of Indians under the Acts of Congress approved April 29, 1898 and the Act approved July 1, 1902, commonly known as the "Atoka and the Supplemental Agree-ents between the Choctaw and Chickasaw Tribes of Indians in the Indian Territory."

Petitioner shows that the controversy herein arises from the following facts:

80 On February 4, 1904, appellant executed a promissory note to the assignor of appellee for Five Thousand ($5,000) Dollars, due in Ninety (90) days, with interest at 8% from date.

That the consideration for said note was that the payee thereof should cease to prosecute further and abandon a certain contest then pending before the Commissioner to the Five Civilized Tribes, in which the payee was contestant and the appellant herein was contestee.

That the appellee took said note with full knowledge of the facts as disclosed by its pleadings. Appellant by demurrer and answer claims that the consideration is contrary to the letter and spirit of the Act of Congress of April 29, 1898, and of July 1, 1902; that it is not a legal, valid or any consideration for the note.

Your petitioner offers herewith a good and sufficient surety for the entering in the Circuit Court of the United States for the Eastern District of Oklahoma, on the first day of the next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court is said Court shall hold that this suit was wrongfully and improperly removed thereto. And it prays this Honorable Court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States in and for the Eastern District of Oklahoma, and it will ever pray.

GEO. M. MILLER AND
L. S. DOLMAN,
Attorney- for Appellant.

STATE OF OKLAHOMA, *Carter County, ss:*

Jennie Lee Williams, appellant herein, deposes and says, that she has read the foregoing petition, and that the matters alleged therein are true to the best of her knowledge and belief.

JENNIE LEE WILLIAMS.

Subscribed and sworn to before me, on this the 20th day of December, A. D. 1907.

C. E. STICKLEY,
Notary Public, McClain Co.

My Commission expires Jan. 2, 1909.

[SEAL.]

[Endorsed:] Copy. Jennie Lee Williams, Plaintiff, *vs.* First Nat'l Bank P. V., Defendant. Petition for Removal. Filed in Supreme Court of the State of Oklahoma Dec. 24, 1907. W. H. L. Campbell, Clerk Supreme Court. By Jessie Pardoe, Deputy. Geo. M. Miller, L. S. Dolman, Att'ys for Appellant.

81 In the Supreme Court of the State of Oklahoma.

JENNIE LEE WILLIAMS, Appellant.
vs.
THE FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

Bond on Removal.

Know all men by these presents: That we, Jennie Lee Williams, as principal, and James Crawford, as surety, are holden and stand firmly bound unto The First National Bank, of Pauls Valley, in the penal sum of One Hundred Dollars for the payment whereof, well and truly to be made, unto the said The First National Bank, its successors and assigns, jointly and firmly by these presents.

Upon condition, nevertheless, that whereas the said Jennie Lee Williams has filed her petition in the Supreme Court of Oklahoma for the removal of a certain cause therein pending, wherein the said Jennie Lee Williams is appellant, and The First National Bank, of Pauls Valley, is appellee, to the Circuit Court of the United States in and for the Eastern District of Oklahoma.

Now, if the said Jennie Lee Williams shall enter into the said Circuit Court of the United States, on the first day of the next session, a copy of the record *of the record* in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, and if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we, the said Jennie Lee Williams and James

Crawford have hereunto set our hands and seals on this the 20th day of December, 1907.

JENNIE LEE WILLIAMS. [SEAL.]
JAMES CRAWFORD. [SEAL.]

82 STATE OF OKLAHOMA, *County of McClain, ss:*

James Crawford makes oath and says that he resides in Purcell within the jurisdiction of said Court; that he is a freeholder therein, and is worth the sum of One Hundred Dollars over and above all property exempt from sale on above execution.

Subscribed and sworn to before me this, the 20th day of December, A. D. 1907.

[SEAL.] C. E. STICKLEY,
Notary Public, McClain County.

My Commission expires 1/2, 1909.

Approved by

_____,
Judge of Supreme Court.

[Endorsed:] Jennie Lee Williams *et al.*, appellant- *vs.* The First Nat'l Bank of P. V., appellee. Bond on Removal. Filed Dec. 24, 1907, in office of clerk of Supreme Court of State of Oklahoma. W. H. L. Campbell, Clerk Supreme Court. By Jessie Pardoe, Deputy. Geo. M. Miller, L. S. Dolman, Att'ys for Appellant.

83 And afterwards on January 10, 1908, a notice of the petition for removal of said cause was filed, a copy of which notice is in words and figures as follows, to wit:

84 In the Supreme Court of the State of Oklahoma.

JENNIE LEE WILLIAMS, Appellant,
vs.
THE FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

Notice.

To the above named appellee or its attorneys:

You are hereby notified that Appellant herein will upon the 10th day of January, 1908, at 10 o'clock of said day or as soon thereafter as the same can be heard, present to said Supreme Court her Petition for the removal of said cause from the Supreme Court of the State to the United States Circuit Court Eastern Division of Oklahoma; a true copy of which petition is hereto attached.

G. M. MILLER &
L. S. DOLMAN,
Attorneys for Appellants.

Service of the above notice accepted this 4th day of January, 1908.

S. T. BLEDSOE,
Attorneys for Appellees.

[Endorsed:] #642. Jennie Lee Williams, appellant, *vs.* The First National Bank of P. V., appellee. Filed Jan. 10, 1908. W. H. L. Campbell, clerk of the Supreme Court.

85 And afterward, on the tenth day of January, 1908, a response to the petition for removal was filed in said case, which reads in words and figures as follows, to wit:

86 In the Supreme Court of the State of Oklahoma.

JENNIE LEE WILLIAMS, Appellant,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

Response to Petition for Removal.

The First National Bank of Pauls Valley, for response to the petition for removal herein, denies that this suit involves the construction of the treaties, laws and acts of Congress concerning the allotment of lands of the Choctaw and Chickasaw Tribes of Indians under the act of Congress approved April 29, 1898, and the act approved July 2, 1902, commonly known as the Atoka and Supplemental Agreement with the Choctaw and Chickasaw Tribes of Indians.

Respondent further denies that the consideration for the note was that the payee thereof should cease to prosecute further, and abandon, a certain contest then pending before the Commissioner to the Five Civilized Tribes in which the payee was contestant, and the appellant herein contestee.

For further response petitioner says that said controversy does not involve any federal question or any right claimed or asserted under any treaty or law of the United States. And further charges that there is no law or treaty of the United States which prohibits, either directly or indirectly, any person from paying a promissory note which he has executed and which he has bound himself to pay.

87 Respondent further says that said application is wholly insufficient and in fact without any merit whatever, and that an inspection of the record herein will disclose that no question of the character mentioned under the terms and provisions of the enabling act — involved in this case.

S. T. BLEDSOE,
Attorneys for Defendant in Error.

[Endorsed:] #642. Jennie Lee Williams, appellant, *vs.* First National Bank of Pauls Valley, appellee. Filed in open court on this 10th day January, A. D. 1908. W. H. L. Campbell.

88 And afterward, at the November Term of the Supreme Court of the State of Oklahoma, on the tenth day of January, 1908, the following proceedings were had, to wit:

#642.

JENNIE LEE WILLIAMS ET AL., Appellants,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

And now this cause is submitted on the petition for removal of said cause on the oral argument heard on same, with ten days to appellants to file briefs and ten days to appellees to file briefs.

89 And afterward, at the November Term, 1907, of said Supreme Court, on the twenty-second day of January, 1908, the following proceedings was had, to wit:

#642.

JENNIE LEE WILLIAMS ET AL., Appellants,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

Now this cause comes on for decision upon the petition for removal of same. The petition and bond being in due form of law, and properly executed, the application is denied because no federal question is raised or involved herein.

90 And afterward, at the November Term of said Supreme Court on the eighteenth day of February, 1908, the following proceeding was had in said cause, to wit:

#642.

JENNIE LEE WILLIAMS, Appellant,
vs.
FIRST NATIONAL BANK OF PAULS VALLEY, Appellee.

And now this cause comes on for final decision and determination by the Court, upon the record and briefs submitted herein.

And the Court having duly considered the same, and being fully advised in the premises, finds: That the judgment of the lower court in this cause should be affirmed, at the cost of plaintiff in error.

It is therefore ordered and adjudged by the Court, that the judgment of the lower court in this cause be and the same is hereby affirmed, at the cost of plaintiff in error.

Opinion by Turner, J. All the Justices concur.

Which opinion reads in words and figures as follows, to wit:

91 In the Supreme Court of the State of Oklahoma, November Term, 1907.

Filed Feb'y 18, 1908.

JENNIE LEE WILLIAMS, Plaintiff in Error,
v.
FIRST NATIONAL BANK OF PAULS VALLEY, Defendant in Error.

(*Syllabus by the Court.*)

1. A complaint which states that at the time of the execution of the note sued on, a contest was pending before the Commission to the Five Civilized Tribes between the payor and payee to determine which of them had a right to take in allotment a certain tract of land, and that the consideration of said note was the abandoning of said contest by the payee, who was contestant, and permitting one of the payors, who was contestee, to file thereon and take the same as her allotment, which was done, and the same thereby became her separate property, does not state a contract void for illegality and a demurrer thereto was properly overruled.
2. A complaint which states that, at the time of the execution of the note sued on, a contest was pending before the Commission to the Five Civilized Tribes between the payor and payee to determine which of them had a right to take in allotment a certain tract of land, and that the consideration of said note was the abandoning of said contest by the payee, who was contestant, and permitting one of the payors, who was contestee, to file thereon and take the same as her allotment, which was done, and the same thereby became her separate property, states the compromise of a disputed claim sufficient as a consideration, to support an express promise to pay and a demurrer thereto upon the ground that it failed to state a sufficient consideration for the note sued on, was properly overruled.
3. An answer which states that the "sole and only consideration" of the note sued on was the illegal sale of certain lands in the Chickasaw Nation, by the payee to one of the payors, and the exhibit filed "as part thereof" and alleged to be a copy of said illegal conveyance, shows that the payee only intended thereby to "bargain, sell and convey and relinquish all my right, title or claim which I have in any way in and to the
92 possession of the lands and improvements situated upon" certain lands (describing them) and to "relinquish" unto said payor and her husband "all right which I have in and to the proceeds due or to become due from the sale of town property, or any interest in said town-site located on the above described premises," fails to state facts sufficient to show an illegal sale of lands or an illegal consideration for said note and a demurrer thereto was properly sustained.

4. A demurrer to an answer which alleges that the "sole and only consideration" of the note sued on was a certain conveyance from the payee to one of the payors of said note and that the consideration therefor had "totally failed" for the reason that at the time said conveyance was made the payee "did not have the possession, right or title to the premises in said conveyance described and did not own the improvements situated thereon, and had no interest therein which she could convey," to said payor; was properly sustained, where from a copy of said conveyance "made a part of said answer and Marked Exhibit A" it appeared that the payee simply relinquished "all my right, title or claim which I have in any way in and to the possession of the lands and improvements situated upon" certain lands (describing them) and also relinquished to said payor and her husband "all right which I have in and to the proceeds due or to become due from the sale of" other property, without covenants of warranty or other covenant.

Error from the United States Court in the Indian Territory, Southern District, at Pauls Valley.

Before Hon. Hosea Townsend, Judge Southern District.

George W. Miller, C. L. Herbert, L. S. Dolman, Attorneys for Plaintiff in Error.

W. A. Ledbetter, S. T. Ledbetter, J. B. Thompson, Dorset Carter, Attorneys for Defendant in Error.

93 *Statement of Facts.*

On June 29, 1904, the First National Bank of Pauls Valley, Indian Territory, defendant in error, plaintiff below, filed its complaint in an action at law in the United States Court in the Indian Territory, Southern District, at Pauls Valley, against the plaintiff in error, defendants below, Jennie Lee Williams, S. L. Williams and S. T. Williams, to recover on a certain promissory note of $5,000.00 made, and delivered by plaintiffs in error, hereafter called defendants, to Susan E. Mays, on February 4, 1904, payable in 90 days, and by her endorsed to defendant in error, hereafter called plaintiff, for value. After much pleading, on January 6, 1905, plaintiff filed its "first amended complaint" to which defendants demurred and upon the same being overruled, filed a joint answer, and upon a demurrer being sustained thereto, filed an "amended answer to the first amended complaint."

On April 14, 1905, there was by plaintiff filed to this pleading a "demurrer to amended answer to first amended complaint," which was sustained, and upon defendants electing to stand on their answer, judgment was rendered for plaintiff and against defendants for $5572.00, which judgment defendants have brought to this court for review by writ of erorr.

Opinion of the Court by TURNER, *J.*:

Plaintiff's amended complaint, after formally declaring on
94 the note, says: "plaintiff further alleges and charges the truth to be that the said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; that at the time of the execution of said note, a contest was pending before the Commission to the Five Civilized Tribes, which said body, at the time, under the law, had authority to entertain and hear the same between the said Jennie Lee Williams, one of the makers of said note, and Susan E. Mays, the payee therein, to determine which of the said parties had a right to take in allotment a certain tract of land adjacent to the town of Maysville, Indian Territory; that said note was executed by the said Jennie Lee Williams, S. L. Williams and S. T. Williams in consideration of the abandoning of said contest by the said Susan E. Mays, the payee therein; that after said note was executed the said Susan E. Mays did abandon her contest and permitted the said Jennie Lee Williams to take said land in allot/ment, which she did, and the land thereby became her separate property;" That the said note had been transferred to it by the said Susan E. Mays for a valuable consideration and that it is now the legal and equitable holder of the same, etc., and prays judgment on the note.

On January 26, 1905, defendants demurred to said complaint, which was overruled by the court, and exceptions noted, and the first assignment of error which we shall consider is:

1. "The court erred in overruling and denying the general and special demurrers of the defendants to the plaintiff's first amended complaint for the reason stated in said demurrers, the said amended complaint upon its face having shown that the plaintiff seeks judgment against the defendants upon an illegal and void contract."

The first question, then, is whether the facts set forth in said complaint show that the contract entered into between Susan E. Mays and Jennie Lee Williams was illegal and void. In other words, had these parties the right to enter into a contract of settlement between themselves of a contest pending before said Commis-
sion? Let us inquire into the nature of such a contest.
95 The Acts of Congress approved March 3, 1893, and March 2, 1895, created what is known as the Commission to the Five Civilized Tribes. After directing that said Commission compile a roll of the citizens of the various tribes, the Act of June 28, 1898, known as the Curtis Bill, provided:

SECTION 11. "That when the roll of citizenship of any one of said nations or tribes is fully compiled as provided by law, * * * the Commission heretofore appointed under acts of Congress, and known as the 'Dawes Commission' shall proceed to allot/ the exclusive use and occupancy of the surface of all the lands of said nations or tribes, susceptible to allot/ment among the citizens thereof, * * *."

It is further provided under the heading, "Allot/ment of Lands:"

"That each member of the Choctaw and Chickasaw tribes * * * shall, where it is possible, have the right to take his allot/ment on lands, the improvements on which belong to him."

And further,

"That all controversies arising between the members of the said tribes as to their right to have certain lands allotted to them shall be settled by the Commission making the allotments."

Pursuant to power vested in it, said Commission promulgated certain rules of practice and procedure applicable to contests before it, which were approved by the Secretary of the Interior January 27, 1903, and entitled, "Rules of Practice," wherein is provided:

96 Rule 1. "Contests may be initiated by or on behalf of an adverse claimant against any party by or for whom a selection of land has been made in the Choctaw, Chickasaw or Cherokee Nations for any sufficient cause affecting the right of possession of the land in controversy, by selecting the same land, and by filing a complaint with the Commission to the Five Civilized Tribes at the land office in the nation in which the land lies."

After providing for service of process on the defendant and getting him into court and providing for a manner of forming an issue between the contesting parties, it is further provided:

Rule 17. "* * * and upon the trial of the contest the Commission will, in all cases when deemed necessary, personally direct the examination of the witnesses."

Rule 19 provides:

"* * * upon the day originally set for hearing and upon any day to which the trial may be continued the testimony of all the witnesses present shall be taken and reduced to writing."

Rule 20 provides for reinstatement of dismissal for want of prosecution within twenty days from service of the notice provided in Rule 14 upon application of either party.

"Rule 14. Cases will be called for trial on the day and at the hour fixed for the hearing, and if the contestant makes no appearance the case will be dismissed for want of prosecution, in which event, written notice of such action, by personal service or registered letter, shall be given by the Commission to the parties at interest, or their attorneys."

Thus it will be seen from the complaint in this case that the contest mentioned therein for and in consideration of the abandonment of which the note was given, was, in effect, a suit pending before the Commission to the Five Civilized Tribes which Susan E. Mays had brought against Jennie Lee Williams to determine which of the two had a right to take in allotment a certain tract of land located adjacent to the town of Maysville.

97 Now, the question is, whether the abandonment of this contest, or rather, the compromise of this suit for the possession of this land thus pending and the contract made pursuant thereto is illegal and void. In support of the contention that it is, defendants rely upon the last section of the Act cited, *supra*, and upon Section 24 of the Supplemental Agreement, which provides that,

"Exclusive jurisdiction is hereby conferred on the Commission to the Five Civilized Tribes to determine, under the direction of the

Secretary of the Interior, all matters relating to the allotment of land,"

and contend that in as much as the former section provides that all such contests shall be settled by the Commission, that the word "shall" is mandatory; that the latter section excludes any other tribunal or person from determining any matter relating to an allotment of land; and that the settlement made by which Susan E. Mays "permitted Jennie Lee Williams to take the said land in allotment," was made without consulting the Commission and was, therefore, void.

In support of this contention it is urged that it has been many times decided that any agreement made by the parties to an allotment contest regarding the disposition of a contest *may* be ignored by the Commission to the Five Civilized Tribes, and several cases alleged to be so decided by the Secretary of the Interior are cited, but which are not before us. Be that as it may, those decisions do not seem to be in point as holding that such a contract is void for illegality, and as the proposition seems to be unsupported by other authorities cited, we will not enter into an elaborate discussion of the matter, but think it will be sufficient to say that as Susan E. Mays was the contestant in this case she had a perfect right
98 at any time to abandon her contest and permit her adversary to prevail and take the property in controversy for her allotment, which she did, and that dismissals for want of prosecutions seems to have been provided for in Rule 14, *supra*. It follows that as the contract under consideration, so far as we are advised, violated no rule of either common or statutory law and did not contravene any rule of public policy, that the same was not illegal and void.

Another question involved in the discussion of this demurrer in the trial court was, whether the complaint stated facts sufficient to show a consideration for the note sued on. The trial court in overruling the demurrer, in effect, held that it did, and this is alleged as error.

The question then presents itself:

Is the compromise of a disputed claim sufficient consideration to support an express promise to pay?

In the case of Buckner *v.* McElroy, 31 Ark. 634, the court said:

"While it is true a right of action does not arise on a mere naked promise, yet if there be any legal consideration for the promise, the court will not inquire into its adequacy,—the law having no means of deciding upon this matter, and it being considered unwise to interfere with the facility of contracting, and the free exercise of the judgment and will of the parties, by not allowing them to be the judges of the benefits to be derived from their bargains, provided there be no incompetency to contract and the agreement violate no rule of law.

It is, indeed, necessary that the consideration be of some value, but it is sufficient if it be of slight value only, *e. g.* the compromise or abandonment of a doubtful right is a sufficient consideration for a contract, even when it turns out that the point given up was

in truth against the promisee."—Citing 1st Chitty on Contracts, 11 Ed. 29; Parsons on Contracts, 436; Story on Contracts 431.

"So an agreement to forbear to institute or prosecute legal or equitable proceedings, or to enforce either a legal or equitable demand, either absolutely or for a time, is sufficient consideration for a promise."

Chitty on Contracts, 35.

99 "In general a waiver of any legal or equitable right at the request of another is sufficient consideration for a promise."

Parsons on Contracts, 444.

Burton & Townsend *v.* Baird & Bright, 44 Ark. 556, was a suit upon a promissory note and the defense was no consideration. The evidence tended to prove that the makers of the note had by letter ordered of Baird & Bright, dealers in machinery at Little Rock, one 30 inch Bradford corn mill, with directions to ship same by river to Cases' Landing on the Arkansas River; that the mill was shipped in good order from Little Rock by steam-boat consigned to the defendants at Cate's Landing, and was put off at its destination on a sand-bar about forty yards from the main bank of the river, that being the usual place for putting off freight for that landing. Afterwards, by a rise in the river, the mill was washed away and lost. The loss would not have happened if the carriers had deposited the mill on the bank of the river out of the reach of high water, nor if the parts of the mill had been fastened together and the rocks fastened in the frame. Six months after the loss occurred and when all the facts were known to the defendants and a voluminous correspondence had ensued between the parties as to the liability of the defendants to pay for the mill, they made the note in suit for the payment of the mill. The verdict and judgment were for the plaintiffs, both in the justice court, where the cause originated, and in the circuit court, where it was taken on appeal.

100 On appeal, the Supreme Court said:

"The compromise of a disputed claim is a sufficient consideration to support an express promise to pay the sum agreed upon, as was determined in Richardson *v.* Comstock, 21 Ark. 69, which was similar in some of its features to the present case"

and affirmed the judgment of the lower court.

In Mason *et al. v.* Wilson *et al.*, 43 Ark. 172, Mayfield Brothers, merchants at Little Rock, had purchased of Mason & Trusdell of St. Louis, a lot of butter of the value of $109.52 but had not paid for the same. The order was countermanded after shipment, and before it was delivered Mayfield Brothers failed. The transfer agent at Little Rock, without authority, received the goods and took it upon himself to transport it from the depot to their place of business and finding the store closed he deposited it in a certain warehouse in Little Rock, where it was attached as the property of Mayfield Brothers at the suit of W. T. & R. J. Wilson. The shippers thereupon brought replevin against the constable for the butter and obtained judgment against him, but afterwards made an arrangement

with the Wilsons by which the butter was turned over to them with the understanding that they were to account to the shippers for its value less amount of the claim of the Wilsons against Mayfield Brothers. Before the excess in the hands of the Wilsons had been paid over, another creditor of the Mayfields caused a writ of garnishment to be served on them to answer as to what effects of the Mayfields they had in their hands. Judgment was rendered against the garnishees for this surplus. The Wilsons then refused to
101 account to the shippers for this sum and the shippers sued them before a justice of the peace for the value of the butter and recovered. In the circuit court the plaintiffs claimed judgment for $59.52 according to their agreement of compromise with the defendants. The court decided that the right of stoppage in transitu had been lost and that the butter was the property of Mayfield Brothers when the writs of attachment and garnishment were sued out and served, and gave judgment for the defendants.

The Supreme Court, in reversing the case, after holding that the butter was the property of Mason & Trusdell and not the property of Mayfield Brothers, at the date of the service of the attachment and garnishment, and that they might have recovered the whole of it or its value, said:

"But to avoid litigation they have agreed that the Wilsons might deduct their debt of $50.00 against the Mayfields out of the proceeds of its sale. And the compromise of the disputed claim is a sufficient consideration to support an express promise, although there may have been no merit or foundation for any such claim." Citing Richardson *v.* Comstock, 21 Ark. 69; Snow *v.* Grace, *Id.* 131; Livingston *v.* Dugan, 20 Mo. 102.

102 Atchison, Topeka & Santa Fe Railway Co. *v.* A. D. Starkweather, 21 Kan. 322, was a suit to quiet title. It seems that theretofore plaintiff and defendant had a controversy pertaining to their respective rights to the land in controversy before the Commissioner of the General Land Office and the various departments, including the Secretary of the Interior, and that the said controversy was finally decided in favor of the defendant to whom was issued the patent to said land. That at the time plaintiff made the contract hereinafter found to have been made, the defendant was then the holder of the legal title to the land in controversy, it being the grantee in the patent for the same; that defendant advertised the land in controversy for sale and plaintiff, in order to prevent the land from being sold, and being in want of means for money to prosecute his case, entered into a written contract with defendant whereby he agreed to purchase the land in controversy; that the plaintiff made the contract with full knowledge of all the proceedings had in the controversy between him and the defendant in the Department of the Interior and with full knowledge that the said land had been awarded to the defendant. The contract recited the sale, the receipt of part of the purchase money, time for subsequent payments, etc., and the agreement on the part of the Company to make a deed upon a full compliance with all the conditions of the sale, etc. The contract was signed by both parties.

103 The court said:

"Now, conceding all that plaintiff claims concerning his title and interest in the land, * * *. In other words, he had an equitable interest which might be made to ripen into a full equitable title, while the company on the other hand held but the naked legal title. With full knowledge of these respective rights and titles, and of the further fact that in a controversy before the officers primarily authorized to examine and decide upon the conflicting claims of himself and the company to the land, they had decided against him and in favor of the company, he makes this contract of purchase. Without the means to carry on further litigation, he contracts to purchase the antagonistic title. He agrees with the owner of that title as to the price, pays a portion thereof and promises to pay the balance, * * *. May he now come into a court of equity and obtain a decree canceling and destroying the title which he has thus contracted to purchase? We think not. The contract was valid and binding upon both parties. It was a compromise of contesting claims, the termination of litigation and the purchase of an outstanding, and rival title. It will not do to say that the plaintiff had the better right; that it was the duty of the defendant, having only a naked legal title, and holding the same simply in trust for the owner of the full equitable title, to convey the same to such owner, and that therefore a conveyance, or promise to convey, was no consideration for a promise on the part of such owner, for the plaintiff was not in fact the owner of the full equitable title and might never become such, and again and chiefly after a compromise, made with full knowledge and without fraud or deception, of a *bona fide* controversy, the courts will not inquire which of the two contestants had the better right. It is enough that they had a controversy and have settled it, and the fact of the dispute uphold the settlement and its various stipulations. Upon such a settlement the court does not inquire what the facts really are. It accepts the statements which the parties have made as conclusive upon them."

So, it seems to be immaterial what the promisor got or did not get on the compromise, or whether the disputed claim was in or out of court; the only question is, did he get a compromise of a disputed claim? If so, it is sufficient to support a promise to pay.

See also Geo. W. Knotts *et al. v.* Chas. H. Preble, 50 Ill. 226.

104 In view of the fact that defendants concede:

"The allegations to establish these facts: There was a contest pending between the parties; that plaintiff's assignor abandoned the same; that she permitted Jennie Lee Williams to take the said land in allotment. Now, if it is within the power of a party to a contest to surrender rights to the other, a consideration undoubtedly passed," we will say that under Rule 14 cited *supra*, when the contestant Susan E. Mays made no appearance, according to her stipulation, and the case was dismissed for want of prosecution and Jennie Lee Williams prevailed in that case, and was permitted to file on the land in controversy, that thereby there was settled by compromise a question of doubtful rights there pending such as was sufficient to support the promise to pay sued on in this cause.

It follows that the demurrers to plaintiff's complaint were properly overruled.

105 On the overruling of their demurrers, defendants filed an "amended answer to first amended complaint" wherein they "allege and charge the truth to be that the sole and only consideration of said note, as aforesaid, was the pretended and illegal sale of certain lands situated near Maysville in the Chickasaw Nation, Indian Territory, by said Susan E. Mays to said Jennie Lee Williams; that said pretended sale was illegal, fraudulent and void * * *," and as evidence thereof filed a copy of said alleged pretended and illegal conveyance as part of their answer and marked it "Exhibit A." Still further answering, in the third paragraph, "defendants say that the plaintiff ought not to further prosecute and maintain this action against them, because they allege and charge that the date of the execution of said conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, as aforesaid, said Susan E. Mays did not have the possession, right or title to the premises in said conveyance described, and did not own the improvements situated thereon, and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note herein sued on for that reason has totally failed;" and ask to be discharged with their costs. To this pleading plaintiffs filed general and special demurrers which were sustained.

And the next assignment of error which we shall consider is:

2. "The court erred in sustaining the general and special demurrers of the plaintiff to the amended answer of defendants to the first amended complaint and in dismissing this cause from the docket of the court, in that the said amended answer contains statements constituting a good and valid defense to plaintiff's alleged cause of action as shown by its first amended complaint."

106 We will consider this together with the next assignment of error, which is:

3. "The court erred in sustaining the plaintiff's general and special demurrers to paragraph three of the defendant's amended answer to the first amended complaint, in that in said paragraph the defendant states that at the execution of the conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, that the said Susan E. Mays did not have the possession, right or title to the premises described in said conveyance and did not own the improvements situated thereon and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note sued on for that reason totally failed."

The exhibit attached to the pleading reads as follows:

"That I, Susan E. Mays, of Maysville, Indian Territory, for and in consideration of the sum of one ($1.) Dollar, cash in hand to me this day paid by Samuel L. Williams and Jennie Lee Williams, the receipt of which money is hereby acknowledged, and the further consideration of the sum of Five Thousand ($5,000.00) Dollars to be paid by Samuel L. Williams and Jennie Lee Williams on the 4th day of May, 1904, which indebtedness is evidenced by a promissory note of even date herewith, due on the 4th day of May, 1904,

bearing interest at the rate of 8% per annum from date, signed by S. L. Williams, Jennie Lee Williams and S. T. Williams, I hereby bargain, sell and convey and relinquish all my right, title or claim which I have in any way in and to the possession of the lands and improvements situated upon (describing the lands) Chickasaw Nation, Indian Territory.

Relinquishing unto the said Samuel L. Williams and Jennie Lee Williams all rights which I have in and to the proceeds due or to become due, or from the sales of town property or my interest in the said town-site located on the above described premises. Hereby relinquishing to them any claim that I have by any former agreement pertaining to any town-site on said lands above described.

Witness my hand this, the 4th day of February, 1904."

(Signed) SUSAN E. MAYS.

Without passing upon the question as to whether or not the facts set forth in this exhibit can be properly considered by us in reviewing the action of the lower court, or whether they could have been properly considered by the lower court in passing upon this demurrer, we will say that it clearly appears from the state-
107 ments thereof that they do not bear out the statements made in the complaint. Instead of the "sole and only consideration of said note" being "the pretended and illegal sale of certain lands," the exhibit shows that it was only intended by Susan E. Mays to "bargain, sell and convey and relinquish all my rights, title or claim which I have in any way in and to the possession of the lands and improvements situated upon" certain lands. And that she was simply, in addition thereto, "relinquishing unto said Samuel L. Williams and Jennie L. Williams all right which I have in and to the proceeds due or to become due from the sales of town property, or any interest in the said town-site located on the above described premises." Thus it would appear from the complaint, if said exhibit is to be considered a part thereof, that the "sole and only consideration of said note" was not "the pretended and illegal sale of certain lands situated near Maysville in the Chickasaw Nation, Indian Territory," and that the court committed no error in sustaining a demurrer to that plea.

108 The third paragraph of the answer reads as follows:

3rd. "And still further answering herein the defendants say that the plaintiff ought not to further prosecute and maintain this action against them, because they allege and charge that at the date of the execution of said conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, as aforesaid, said Susan E. Mays did not have the possession, right or title to the premises in said conveyance described, and did not own the improvements situated thereon, and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note herein sued on, for that reason, has totally failed;" and ask to be discharged with their costs.

To this paragraph of the answer plaintiff demurs:

"* * * because the matters therein set forth are wholly irre-

levant, and immaterial to the issues and constitutes no defense to plaintiff's cause of action, or any part thereof."

The court sustained this demurrer, and the question now is whether this paragraph states facts sufficient to constitute a plea of total failure of consideration.

Mansfield's Digest, Section 5033, provides:

"* * * The defendant may set forth in his answer as many grounds of defense, * * * as he shall have. Each shall be distinctly stated in a separate paragraph, and numbered."

Bliss, Code Pleading, Section 346, says:

"This requirement to state each defense separately is substantial as well as formal, and involves the obligation to embody in each statement every fact which is necessary to constitute the defense."

See also Cairo & Fulton R. R. Co. *v.* Parks, 32 Ark. 131; Taylor *v.* Purcell, 60 Ark. 611.

In speaking of pleas of failure of consideration 8 Cyc. 161, says:

"These pleas when permissable should be framed on the theory that originally there was a consideration, which wholly or partially fails because of something occurring subsequently, and must state facts sufficient to defeat or diminish a recovery."

14 Enc. Pl. and Pr. p. 635, says:

"Where the alleged failure consists in the non-performance of plaintiff's reciprocal promise or duty the allegation and breach thereof must be distinctly alleged, showing with certainty that defendant has suffered damage directly resulting from the alleged breach."

109 Now, giving this plea every intent/ment gathered from the entire answer, which we are not compelled to do: where is alleged the non-performance of plaintiff's reciprocal promise and the breach thereof? In other words, where in this plea is alleged a duty and a breach thereof on the part of plaintiff which he has not performed, resulting in damage to this defendant? It is simply alleged that "said Susan E. Mays did not have the possession, right or title to the premises in said conveyance described, and did not own the improvements situated thereon, and had no interest therein which she could convey to the defendant Jennie Lee Williams." Does the plea show that Susan E. Mays so represented? Did she purport to convey the title to this property to Jennie Lee Williams? It does not so appear from the face of the plea. To aid it, if possible, let us turn to the exhibit. That only purports to "bargain, sell and convey and relinquish all my right, title or claim which I have in any way in and to the possession of the lands and improvements situated upon" (describing the land) and relinquishing to the makers of this note "all rights which I have in and to the proceeds due or to become due" of other property. There was no warranty of title here.

Ray *et al. v.* Wolford, Use, etc. 1 Smedes & Marshall, (Miss.) 523, was an action in assumpsit on a promissory note executed by plaintiffs in error, the defendants below. Besides the general issue they filed a special plea to the effect following: "that the note sued on,

was executed for and in consideration of a certain town lot
110 in Brandon, sold by Charles S. Woolfold as executor of Wm. R. Woolfold, deceased, to the defendants, and for no other consideration; and they aver that the whole consideration has failed, because neither the said decedant nor his said executor, ever had any title to said lot which they could communicate to the defendants." To this plea there was a demurrer. Passing on it the court said:

"It does not disclose enough to enable the court to determine whether the consideration has failed or not. It states no warranty of title, and, for aught that appears, the purchaser might have agreed to run the risk of the title. It is therefore defective."

So we say in this case, this plea states no warranty, but from the exhibit it does affirmatively appear that the purchaser, the defendant in this case, did agree to run the risk of the title to the property therein set forth and cannot now be heard to say that the consideration of the note given in purchase of that property failed by reason of plaintiff's failure of title therein. Nowhere is it alleged that she did not derive the benefit of that compromise or is not in full & undisturbed possession of everything involved in that controversy. Nowhere is it alleged that she has in any way been disturbed in her possession in anything thereby acquired or has suffered any damage by reason of the alleged failure of title, but it is conceded on both sides that she took the property in controversy in allotment.

In support of the doctrine that a breach of the reciprocal promise must be distinctly alleged showing with certainty that the defendant has suffered damage, we call attention to Taylor *v.* Purcell,
111 60 Ark. 612, where the court said:

"In the first paragraph of the supplemental answer he alleges in substance that plaintiffs, to induce him to execute the note sued on, agreed to release all claims under a certain deed of trust upon defendant's property, and that they had failed to comply with such agreement, and that the trust deed was still unsatisfied, etc. But he does not state * * * that he was damaged in any way by the failure to satisfy said deed. He does not allege that plaintiff afterwards made any claim to the property described in the deed, or disturbed his possession or right thereto to any extent, * * *," and held that this paragraph constituted no plea of failure of consideration for the note sued on.

It follows that the court did not err in sustaining the demurrers to the defendant's amended answer to the first amended complaint and as the facts set forth in plaintiff's first amended complaint were sufficient to state a cause of action: that the judgment of the lower court must be affirmed.

112 UNITED STATES OF AMERICA, *State of Oklahoma*, ss:

I, W. H. L. Campbell, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 111 pages, numbered from 1 to 111, both inclusive, are a full, true and complete transcript of all the proceedings in the cause of Jennie Lee Williams *et al.*, Appellant, *vs.* First National Bank of Pauls Valley, Appellee, as the same remains on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at Guthrie, this 3rd day of April, 1908.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 21,113. Oklahoma supreme court. Term No. 349. Jennie Lee Williams, S. L. Williams, and S. T. Williams, plaintiffs in error, *vs.* The First National Bank of Pauls Valley. Filed April 14th, 1908. File No. 21,113.

No. 130.

IN THE SUPREME COURT OF THE UNITED STATES.

JENNIE LEE WILLIAMS, S. L. WILLIAMS AND S. T. WILLIAMS,

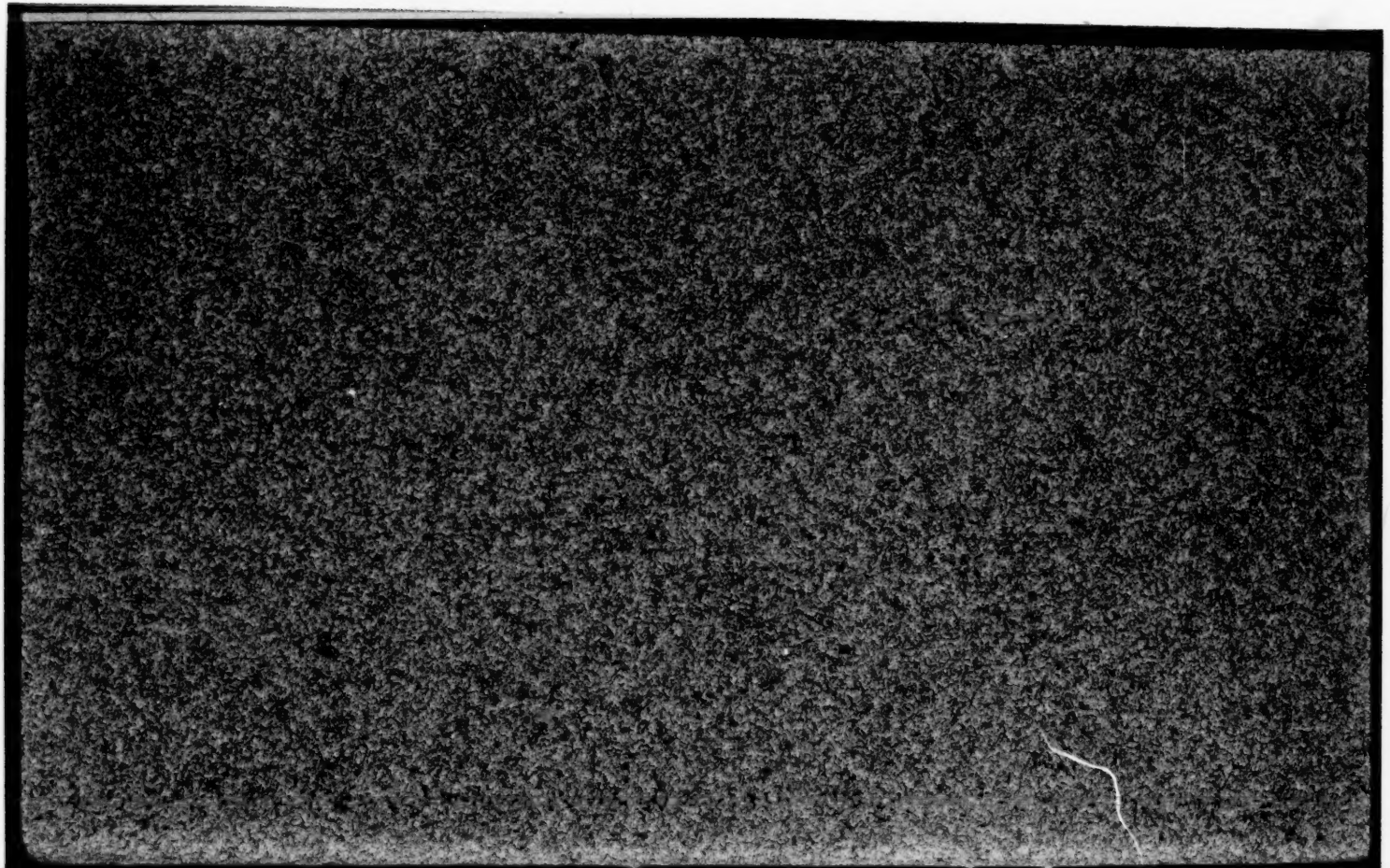
Plaintiffs in Error,

vs.

THE FIRST NATIONAL BANK OF PAULS VALLEY,

Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.



IN THE SUPREME COURT
OF THE UNITED STATES.

JENNIE LEE WILLIAMS, S. L. WILLIAMS AND S. T. WILLIAMS,

Plaintiffs in Error.

vs.

THE FIRST NATIONAL BANK OF PAUL'S VALLEY,

Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

I

The First National Bank of Pauls Valley, as owner and holder of a promisory note for the sum of $5,000, executed by the plaintiffs in error to Susan E. Mays, sought to recover the full amount of the same in the Southern District of the United States Court for the Indian Territory. The makers of the note sought to defeat the action by alleging that the

consideration of the note was illegal and for the sale of land in the Chickasaw Nation prohibited by law. The court sustained demurrers to the answer, and instructed a verdict for the full amount of the note. The makers carried the same by writ of error to the United States Court of Appeals for the Indian Territory. The case being undisposed of at the time Oklahoma became a state, was transferred to the Supreme Court of the new state. The plaintiffs in error, believing their defense to be under the constitution and laws of the United States, and that the suit involved the construction of the laws of congress and the treaties between the United States and the Choctaw and Chickasaw Indian tribes, petitioned the Supreme Court of Oklahoma to remove the case to the Circuit Court of the United States for the Eastern District of Oklahoma, but said court denied their petition; and afterwards, on the 18th day of February, 1908, affirmed the judgment of the lower court, and from this judgment the makers of the note have prosecuted this writ of error.

II

The errors relied on as contained in the record (2) are the following:

First. This cause involving the construction of the statutes of the United States in relation to lands in the Indian Territory, as well as the construction of the treaties between the United States and the Choctaw and Chickasaw tribes of Indians, the Supreme Court of Oklahoma was without jurisdiction

and erred in denying the motion of these plaintiffs to remove this cause to the United States Circuit Court for the Eastern District of Oklahoma.

Second. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' first assignment of error filed in the trial court, the same being as follows: "The court (meaning the trial court) erred in overruling and denying the general and special demurrers of defendants to the plaintiff's first amended complaint, for reasons stated in said demurrers; the said amended complaint upon its face having shown that the plaintiff seeks judgment against the defendants upon an illegal and void contract."

Third. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' second assignment of error filed in the trial court, which assignment is as follows: "The court erred in sustaining the general and special demurrers of the plaintiff to the amended answer of defendants to the first amended complaint and in dismissing this cause from the docket of the court in that the said amended answer contains statements constituting a good and valid defense to the plaintiff's alleged cause of action as shown by its first amended complaint."

Fourth. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' third assignment of error filed in the trial court, which assignment is as follows: The court erred in sustaining the plaintiffs general and special demurrers to paragraph three of the defendant's amended answer to the first amended complaint, in that in said para-

graph the defendant states that at the execution of the conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, that the said Susan E. Mays did not have the possession, right or title to the premises described in said conveyance and did not own the improvements situated thereon and had no interest therein which she could convey to the defendant, Jennie Lee Williams, and that the consideration for the note sued on for that reason totally failed."

Fifth. The Supreme Court of Oklahoma erred in not sustaining these plaintiffs' fourth assignment of error filed in the trial court, which assignment is as follows: "The court erred in rendering judgment in favor of plaintiff and against defendants for the sum of Five Thousand Five Hundred and Seventy Two Dollars with interest thereon from the date of said judgment at the rate of ten per cent. per annum and judgment for the cost of the action and in awarding execution upon said judgment."

Sixth. The amended answer showing that the consideration for the note sued on was for an attempted sale of unallotted lands in the Chickasaw Nation, which sale was illegal and prohibited by the statutes of the United States, and the treaties between the United States and the Choctaw and Chickasaw Indians, the Supreme Court of Oklahoma erred in holding said amended answer insufficient in law and in affirming the action of the trial court in sustaining demurrers thereto.

III

By the first amended complaint upon which the

case was tried the First National Bank of Pauls Valley alleged that on the 4th day of February, 1904, the defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams executed to Susan E. Mays their promisory note for the principal sum of five thousand dollars which note is as follows:

"Tishomingo, Ind. Ter., Feb. 4th, 1904.

Ninety (90) days from date without grace, we, or either of us, jointly and severally promise to pay to the order of Susan E. Mays, Five Thousand and 00/100 Dollars for value received, at First National Bank of Pauls Valley, Ind. Ter., with interest at the rate of 8 per cent. per annum from date until paid; all principal or interest not paid when due shall bear interest at 10 per cent. per annum and failure to pay interest when due shall cause the whole of the note to become due and collectable at once. Should suit be commenced for the collection of this note, a reasonable amount shall be allowed as attorney's fees and taxed with the costs, whether it go to judgment or not; and the holder may sell at public or private sale, without notice, any and all collaterals held as security for this note at any time, and credit proceeds thereof on this note, or collect collaterals by law and apply the proceeds as aforasaid; and the several makers, sureties and endorsers hereto hereby waive appraisement, notice or extension, non-payment and protest and agree that any extension of time made hereon, or renewal hereof shall not effect their liability, whether they have notice of such extension or renewal or not."

That the note was executed by said Jennie Lee Williams who was the wife of the defendant, S. L. Williams, for the benefit of her separate estate; that at the time of the execution of the note, a contest was pending before the commission to the Five civilized tribes, between said Jennie Lee Williams and Susan E. Mays to determine which of them had the right to take in allotment a tract of land located adjacent to the town of Maysville in the Indian Territory; that the note was executed by said Jennie Lee Williams and the other defendants in consideration of the abandoning of said contest by said Mays, and that upon the execution of the note, said Mays did abandon her contest, and permit the said Jennie Lee Williams to take the said land in allotment which she did, and the said land thereby became her separate property; and the said note had been endorsed and transferred to the plaintiff for a valuable consideration (17).

The answer of the defendants, after admitting their residence to be the Southern District of the Indian Territory and the incorporation of the plaintiff Bank was as follows:

1st. The defendants admit that heretofore, to-wit, on the 4th day of February, 1904, they executed and delivered unto Susan E. Mays their promisory note for the principal sum of Five Thousand Dollars due ninety days from date, and they admit that said note, as so executed is copied in the plaintiff's first amended complaint, and that the same is witnessed

by James A. Cotner and they admit that the defendant, Jennie Lee Williams, is a married woman and the wife of the defendant S. L. Williams, but they allege and charge that said note was executed by Jennie Lee Williams, as principal and S. L. Williams S. T. Williams as sureties.

These defendants deny, as alleged in the complaint, that said note was executed by the said Jennie Lee Williams, for the benefit of her separate estate; but they admit that at the time of the execution of the said note a contest was pending before the commission to the Five civilized tribes between Susan E. Mays, as contestant, and Jennie Lee Williams, as contestee, and that the purpose of said contest, as instituted, by the said Susan E. Mays, was to determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; but these defendants deny that said note was executed by the said defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the withdrawal of said Mrs. Susan E. Mays from said contest, as aforesaid; and they deny that the said Susan E. Mays did withdraw her contest and permit the said Jennie Lee Williams to take the said lands in allotment; and that by reason of the withdrawal of the said Susan E. Mays, from said contest, that said land became and was the separate property of the said defendant, Jennie Lee Williams, but de-

defendants allege and charge the truth to be that since the execution and delivery of said note as aforesaid, that said commission aforesaid, has duly awarded and delivered to said defendant Jennie Lee Williams, certificate to said land.

2nd. But these defendants allege and charge the truth to be that sole and only consideration of said note, as aforesaid, was the pretended and illegal sale of certain lands situated near Maysville in the Chickasaw Nation, Indian Territory, by the said Susan E. Mays to Jennie Lee Williams; that said pretended sale was illegal, fraudulent and void; that the same was made, executed and delivered by said Susan E. Mays, to said Jennie Lee Williams, in violation of and in contravention of the provisions of a treaty made by and between the United States and the Chickasaw and Choctaw tribes of Indians in the year 1902, which said treaty was ratified by a majority vote of said tribes and by act of the Congress of the United States, and in violation of and in contravention of the provisions of a treaty of the United States and the said tribes of Indians made, concluded and ratified by said tribes and the Congress of the United States in the year 1898, and known as the "Atoka Agreement;" and that by reason thereof said pretended conveyance from said Susan E. Mays to said Jennie Lee Williams, is illegal, fraudulent and void, and of no effect and that by reason of the premises, aforesaid, the said note herein sued for, when executed, was and hitherto since has been illegal and void, and without consideration—a

copy of said conveyance is hereto annexed and marked "Exhibit A" and made a part hereof.

3rd. And still further answering herein the defendants say that the plaintiff ought not further prosecute and maintain this action against them, because, they allege and charge that at the date of the execution of said conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, as aforesaid, said Susan E. Mays did not have the possession, right or title to the premises, in said conveyance described, and did not own the improvements situated thereon, and had no interest therein she could convey to the defendant, Jennie Lee Williams, and that the consideration of the note herein sued on for that reason has totally failed; all of which the defendants are prepared and willing to verify and they put themselves upon the country and pray the judgment of the court that they be discharged with their costs (26,27).

"Exhibit A." Deferred to in the second clause of the above answer was as follows:

Tishomingo, Indian Territory Feb. 4, 1904.

Know all men by these presents:

That I, Susan E. Mays of Maysville, Indian Territory, for and in consideration of the sum of One Dollar ($1) cash in hand to me this day paid, by Samuel L. Williams and Jennie Lee Williams the receipt of which money is hereby acknowledged and the further consideration of the sum of Five Thousand Dollars ($5,000) to be paid by said Samuel L. Williams and Jennie Lee Williams on the 4th day of May 1904, which indebtedness is evidenced by a

promisory note of even date herewith, due on the 4th day of May, 1904, bearing interest at the rate of eight per cent. per annum from date, signed by S. L. Williams, Jennie Lee Williams and S. T. Williams, I hereby bargain, sell and convey and relinquish all my right, title, or claim which I have in any way in and to the possession of the lands and improvements situated upon the North half of the Northeast quarter of the Southeast quarter of Section 16 and the Northeast quarter of the Northwest quarter of the Southeast quarter Section 16; and the Northeast quarter of the Southeast quarter of Section 16, all in Township 4 N. R. 2 West Chickasaw Nation, Indian Territory.

Relinquishing unto the said Samuel L. Williams and Jennie Lee Williams, all rights which I have in and to the proceeds due or to become due, or from the sales of town property, or my interest in the said townsite located on the above described premises. Hereby relinquishing to them any claim that I have by any former agreements pertaining to any townsite on said lands above described.

Witness my hand this 4th day of February, 1904.

SUSAN E. MAYS (28)

The demurrers of the plaintiff to the above answer were as follows:

1st. The plaintiff demurs to the answer of the defendants herein and for cause says that the same is insufficient and constitutes no defense to plaintiff's cause of action herein.

2nd. The plaintiff further specially demurs to the following part of paragraph one of said answer, to-wit: "The defendants deny, as alleged in the complaint that said note was executed by the said Jennie Lee Williams for the benefit of her separate estate," because it appears from the facts set forth in said answer that the same is only a conclusion of law and the same was executed for the benefit of the estate of the said Jennie Lee Williams.

3rd. The plaintiff further specially demurs to the following part of paragraph one of the defendant's answer herein, to-wit: "These defendants deny that said note was executed by the said defendants, Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the withdrawal of the said Mrs. Susan E. Mays from said contest, as aforesaid; and they deny that the said Susan E. Mays did withdraw her contest and permit said Jennie Lee Williams to take the said lands in allotment; and that by reason of the withdrawal of the said Susan E. Mays from said contest that said land became and was the separate property of the said defendant, Jennie Lee Williams" for the reason that the denial of a withdrawal is immaterial and does not deny the allegations contained in the complaint and is drawn in such form and that by being joined to the other clauses it does not amount to a denial of any of the facts contained in said complaint.

4th. Plaintiff further specially demurs to the second paragraph of the said answer because the

same states only a conclusion of law, states no fact watever, and it does not state a defense to the plaintiff's cause of action or any part thereof.

5th. Plaintiff further specially demurs to the third paragraph of said answer because the matter therein set forth are wholly irrelevant, and immaterial to the issues and constitutes no defense to plaintiff's cause of action, or any part thereof.

Upon all of which this plaintiff prays the judgment of the court (29, 30).

The court on the 14th day of April, 1905, sustained the demurrers to the answer, and the defendants having declined to amend, instructed a verdict on the pleadings for the plaintiff (31).

The defendants interposed a general demurer to the complaint because the facts alleged were not sufficient to constitute a cause of action and they demurred specially because,

1st. The note sued on was executed pursuant to an alleged contract to abandon a contest.

2nd. The note sued on was executed for an illegal consideration and without any consideration (21).

These demurrers were overruled by the court (30).

We have stated above the full substances of the pleadings in order to show that a Federal question was involved in the suit and in order that the demurrers may be fairly considered.

The Supreme Court of Oklahoma, in affirming the judgment, proceeded upon the theory that it appears from the pleadings that the note was ex-

ecuted in consideration of the compromise of disputed rights, and applied the rules ordinarily applicable to compromises and promises made in consideration of the same. We do not think the pleading justifies this construction. It is true the complaint alleges that the note was executed in consideration of the promise made by Mrs. Mays to withdraw her contest and to permit Mrs. Williams to take the land in allotment. This is all the complaint says in reference to the consideration of the note; and these allegations are expressly denied in the answer. The answer expressly alleges that the sole and only consideration for the note was the pretended and illegal sale of unallotted lands in the Chickasaw Nation which sale was illegal, fraudulent and void and forbidden by the laws of the United States and by treaties with the Indian Tribes. The answer further alleged that Mrs. Mays did not have possession, right or title to the premises conveyed and did not own the improvements thereon and had no interest therein and that the consideration for the note for that reason had totally failed.

It is not questioned but that ordinarily a compromise of a disputed right will support a promise to pay. If, however, the consideration for the promise is the doing of that which is immoral, forbidden by law or against public policy, the promise will not be enforced even though it grow out of a compromise. If Mrs. Mays did not have the right to sell unallotted land in the Chickasaw Nation, and of this there can be no question, the sale which was otherwise illegal,

is not made legal by a compromise. The ruling on the demurrers cannot be justified by saying that Mrs. Mays agreed to withdraw her contest and permit Mrs. Williams to take the land in allotment. While this allegation is made in the compiaint. it is denied in the answer and cannot be considered in ruling upon the demurrers to the answer. The answer alleged that Mrs. Mays did not have possession of the land or own any improvements thereon. These allegations in the answer must be taken as true. If Mrs. Mays did not have possession of the land or own improvements thereon, then what right did she have in the land? The only right that she could have was the right the same as any other member of the tribe to apply to have the land allotted to her. Mrs. Williams, who had an equal right, had first applied, for her application naturally preceded the contest. The right of Mrs. Mays to apply for unimproved land of which she was not in possession, was a personal privilege and not the subject of bargain and sale. It would encourage strife, produce delay and seriously interfere with the public business, if members of the tribe were permitted to file contests in order to extort money or to be paid not to appear. Whenever there are conflicting claims to an allotment, the Dawes Commission has tried the case upon its merits regardless of the agreement of the parties.

The Secretary of the Interior has often decided that any agreement made by the parties to an allot-

ment contest may be disregarded by the Dawes Commission; Creek Contest No. 491, Quabner vs. Greenleaf 10th annual report. No dismissal or confession of judgment is allowed. Testimony must be taken and the land must be awarded to the person who was the owner of the improvements thereon at the time of the filing of the first application. Creek contest No. 267, Sookey vs. Smith; Creek contest No. 260, Drew vs. Conard; Creek contest No. 263, Franklin vs. Franklin; Creek contest No. 326, Penman vs. Haikey.

The Federal courts take judicial notice of the rules of the land department in contest cases; Coha vs. U. S. 152, U. S. 221.

The rights of the citizen claiming to own improvements on more land than he is entitled to take, are purely personal and he cannot convey title to any citizen as against one who is in possession of the land. Chickasaw Allotment Contest, No. 104. Lane vs. Apala.

"A bill of sale from a citizen who has completed the allotment to which his family are entitled and has selected the land upon which he intends to file is void and conveys no title. Chickasaw Allotment Contest No. 821. Folsom vs. Victor.

The Curtis Act was not intended to give illegal holders any vested or other right to dispose of their illegal possessions to the exclusion of other members of the tribe who have entered upon and selected their pro rata share prior to any attempted trans-

fers by those whose possessions are in excess of their pro rata shares." Creek contest No. 759. Burnett vs. Berry.

"A relinquishment signed by the contestee after institution of contest as part of an unsuccessful attempt to compromise and reciting no consideration is not sufficient to deprive contestee of her rights in the land when she does not waive her claim in the presence of the commissioner. Chickasaw contest No. 112. Byars vs. Carter.

"The bill of sale after the institution of a contest is not binding on the commissioner." Chickasaw contest No. 197. Jacobs vs. Townsend.

In recent years, in Stevens vs. Cherokee Nation, 174, U. S. 445, Cherokee Nation vs. Hitchcock, 187 U. S. 307, and numerous other cases, this court has had occasion to investigate and pass upon conditions in the Indian Territory. Prior to the Curtis Bill, whatever title existed was vested in the tribe. The individual Indian had no title which he could transfer by deed or will or descent. The child, during the life of the father or mother, had the same right as its living ancestor. When a member of the tribe died, whatever interest he had remained in the tribe and did not pass to his descendants. It was years after the enactment of the Curtis bill, before the right of an allotment upon the death of the claimant passed to his heirs. Prior to this, no right of inheritance in land was recognized. While prior to the Curtis bill, every member of the tribe in theory had equal rights, the strong and the grasping had prac-

tically appropriated the entire common property to themselves. Inter-married citizens and citizens of mixed blood had, without right, enclosures containing many thousand acres. These men who had selfishly sought to appropriate more than their share, had no right which the government was under any moral obligation to respect. The Curtis bill and the Atoka agreement, Sts. at Large, Vol. 30, 641, sought to remedy these conditions, and to prepare the country for equal distribution among the members of the tribe, and to give to each one his rights in severally. The full blood Indians, who had equal rights to the lands with the other members of the tribe, were excluded from the most desirable parts of the Territory, and were confined to insignificant holdings. The United States government assumed the duty of allotting the lands and of administering exact justice, and the giving to each member of the tribe, however humble, his just proportion. This could not be done if the greedy members of the tribe who had appropriated more than their just proportions, could say who should take their excessive holdings. It would have been unjust and against public policy to allow the member who had excessive holdings, to withhold the same from allotment and force other members of the tribe to pay for the privilege of taking such land. The government assumed the duty of giving to each member of the tribe, without cost and without price, his just prorata of the common land. In furtherence of this intention, the 16th Section of the Curtis bill, Sts. at Large, Vol. 30, 501, provided

that no person should claim, demand or receive any rents or other compensation for the use of land except upon his approximate share upon allotment. Section 17 provided that it should be unlawful for any citizen to enclose or hold possession of land greater than his approximate share upon allotment. There is nothing in the act showing that the excessive holder had any right to dispose of the improvements on his excessive holdings. Section 4 did provide that persons claiming to be citizens whose claims have been adversely decided, could, within a designated time, dispose of their improvements. Throughout this Act, it is made to appear that the excessive holder should not be an impediment in the way of an equal distribution of the lands among the members of the tribe. The member who had sought to appropriate more than his share, had trampled upon the rights of other members and had violated the laws of the tribe. As to his excessive holdings, he had no right that should be respected. If he could withhold his excess from allotment, how long could he with-hold it? If he had the right to say who should take his excess in allotment, when should he have to exercise that right? How long could the land be with-held? The 19th Section of the supplemental agreement, Sts. at Large, Vol. 32, Page 643, still further manifests the intention of congress that the excessive holder should not be an impediment.

It makes it unlawful for any member of the tribe after ninety days from the ratification of the agree-

ment, to enclose or hold in any manner, more than 320 acres of average allotable lands. This supplemental agreement was ratified much more than ninety days before this controversy arose. It seems preposterous that where rights are equal and each member entitled to his prorata without cost and without price, that one member of the tribe who had no right to sell should charge another member of the tribe Five Thousand Dollars for the privilege of taking forty acres of common land in allotment.

The 11th Section of the Curtis Bill, Sts. at Large, Vol. 30, 497, provides that whenever it shall appear that any member of the tribe is in possession of lands, his allotment shall be made out of lands in his possession including his home if the holder so desires. The Atoka Agreement, Sts. at Large, Vol. 30, 507, provides that each member of the Choctaw and Chickasaw tribes shall, where it is possible, have the right to take his allotment on land, the improvements on which belong to him, and such improvements shall not be estimated in the value of his allotment. The member of the tribe, it will be seen, is permitted, though not required, to select his allotment upon lands in his possession or upon which he has improvements. Should, he, however, be a wrongful and excessive holder, and have land in his possession in excess of his allotive share, or have improvements on more land, than he can take in allotment, the Curtis bill and the Atoka Agreement no where confer upon him any right by reason of the improve-

ments on his excessive holdings.

The Supreme Court of Oklahoma, recently in McLaughlin vs. Ardmore Loan & Trust Co , Oklahoma Law Journal, Vol. 6, No. 11, Page 463, had occasion to pass upon this question.

An Indian family had improvements extending over more land than they were entitled to take in allotment. They attempted to sell the improvements on the land which they could not take in allotment to the Ardmore Loan & Trust Co. In consideration of this sale, the Ardmore Loan & Trust Co. executed a promisory note. The Supreme Court of Oklahoma held that the attempted sale was contrary to law and against public policy and that the note could not be collected.

It would be against sound public policy and oppressive to the Indians whom the government has agreed to represent, to permit an applicant for an allotment to be held up by a constantant and compelled to pay a large sum of money in order to obtain land to which she was already entitled. If this could not be done, then the demurrer of the defendants to the complaint should have been sustained. The petition alleged that the consideration for the note was the agreement of Mrs. Mays to withdraw her contest and permit Mrs. Williams to take the land in allotment. According to the complaint, this agreement to withdraw the contest was the sole consideration for the note. But be this as it may, the demurrers of Mrs. Mays to the answer of the defendants should have been over-ruled. Mrs. Mays, prior to

allotment, did not have the right to sell or to agree to sell the land. A conveyance or agreement to convey would have been in violation of law, against public policy and absolutely void. It could not furnish a consideration for a promisory note. The answer distinctly alleged that the sole and only consideration for the note was the sale of unallotted land in the Chickasaw Nation. If such was the case, and in ruling upon the demurrer, the allegation must be accepted as true, the answer alleged a complete defense to the action. The answer further alleged that Mrs. Mays did not have possession of the land or the right to possession and did not own the improvements thereon, and had no interest which she could convey, and that the consideration for the note sued on, had for that reason totally failed. If these allegations be true, there was no consideration for the note. The ruling on the demurrer cannot be justified by any hair splitting distinction between failure of consideration and want of consideration. The answer alleges the facts.

The conclusion drawn from the facts whether a failure of consideration or lack of consideration is immaterial and does not affect the sufficiency of the pleading.

In the recent case of Lingle vs. Snyder, 160, Fed. 627, the Circuit Court of Appeals for the 8th Circuit, held a contract contemplating the inclosure and use of public lands to be illegal and not enforcible. In Anderson vs. Carkins, 135, U. S., 483, it was held that a contract of a pre-emptor to convey a

part of his pre-emption in consideration of improvements upon it, at the time he took possession, was against public policy and could not be enforced. This case is also important in reference to our claim that a Federal question is involved. Anderson vs. Carkins was carried by Writ of Error from the Supreme Court of Kansas because a Federal question was involved. That case involved the construction of the pre-emption laws of the United States in like manner as this case involves the construction of the Curtis Bill, the Atoka Agreement and other statutes of Congress and treaties with the Choctaw and Chickasaw Indians relating to tribal land.

Section 16 of the Act providing for the Admission of Oklahoma Sts. at Large, Vol. 34, 1286, says:

"That all causes, proceedings and matters pending in the Supreme or District Courts of Oklahoma Territory, or in the United States Court and the United States Court of Appeals in the Indian Territory, arising under the constitutional laws or treaties of the United States.....shall be transferred to the proper United States Circuit or District court established by this Act, for final disposition, and shall therein be proceeded with in the same manner as if originally bought therein: Provided, that said transfer shall not be made in any case where the United States is not a party except on application of one of the parties in the court of which the cause is pending at or before the second term of such court after the admission of said state, supported by oath,

showing that the cause is one which may be transferred; and in causes transferred from the appellate courts of said territories the circuit court of the United States in such state shall first determine such appellate matters as the successor of and with all the power of said Territorial appellate courts and shall thereafter proceed under its original jurisdiction of such causes.

All final judgments and decrees rendered in such Circuit and District Courts in such transferred cases, may be reviewed by the Supreme Court of the United States, or by the United States Circuit Court of Appeals, in the cases and in the manner as is now provided by the law with reference to the judgments and decrees of the existing United States Circuit and District Courts."

Mrs. Williams, at the first term of the Supreme Court of Oklahoma, petitioned said court to remove the cause to the United States Circuit court for the Eastern District of Oklahoma. She supported her petition by her oath and showed that a Federal question was involved as herein claimed (39).

She also tendered a satisfactory bond. The petition was resisted by Mrs. Mays upon the sole ground that the case did not involve a Federal question (43).

The judgment denying the petition recites that the petition and bond were in due form of law and properly executed, but that the application was dedenied because no federal question is raised or involded (44).

If a Federal question is involved in this case, and in reference to that there can be no serious question, the Supreme Court of Oklahoma committed an error in denying the application for the removal of the case. All of which is respectfully submitted.

W. O. DAVIS,
L. S. DOLMAN,
R. E. THOMASON,
Atty's for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 130.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

v.

FIRST NATIONAL BANK OF PAULS VALLEY, DEFENDANT IN ERROR.

MOTION TO DISMISS WRIT OF ERROR.

The defendant in error respectfully moves this court to dismiss the writ of error and this cause from the docket of this court because no Federal question is necessarily involved, nor is a construction of the Constitution, a treaty or law of the United States necessary to the disposition of the questions involved in this cause.

Second. Because in the determination of the questions involved the Supreme Court of the State of Oklahoma did not

find it necessary to construe the Constitution of the United States or any statute or treaty thereof.

Wherefore the defendant in error moves the court to dismiss the writ of error herein and this cause from the docket of this court, and that it have such other and further relief as it may be entitled to in the premises.

S. T. BLEDSOE,
J. B. THOMPSON,
Attorney for Defendant in Error.

[Endorsed:] In the Supreme Court of the United States. October Term, 1909. No. 130. Jennie Lee Williams, S. L. Williams, and S. T. Williams, Plaintiffs in Error, *v.* First National Bank of Pauls Valley, Defendant in Error. No. —. Motion to dismiss Writ of Error.

IN THE

SUPREME COURT

OF THE

UNITED STATES

JENNIE LEE WILLIAMS, et al.,
Plaintiffs in Error,

vs.

THE FIRST NATIONAL BANK, OF PAULS VALLEY,
Defendant in Error.

No. 130.

Brief on Behalf of Defendant in Error

S. T. BLEDSOE,
J. B. THOMPSON,
Attorneys for Defendants in Error.

THE STATE CAPITAL CO., GUTHRIE, OKLAHOMA.

IN THE

SUPREME COURT

OF THE

UNITED STATES

JENNIE LEE WILLIAMS, et al.,
Plaintiffs in Error,

vs.

THE FIRST NATIONAL BANK, OF PAULS VALLEY,
Defendant in Error.

No. 349

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

STATEMENT.

Not having been served with the brief filed by counsel on behalf of Plaintiffs in Error, and not having seen nor had an opportunity to inspect the same, and not having been advised that this cause was set for hearing in this court until within the last twenty-four hours, counsel for the Bank has found it necessary to prepare this brief independently of

such brief as may have been prepared and filed on behalf of Plaintiffs in Error.

If all of the contentions presented by the Plaintiffs in Error, hereinafter referred to as "defendants," are not considered, it is because of a lack of opportunity to ascertain what such contentions are. The Defendant in Error will be referred to in this brief as "plaintiff," the Plaintiffs in Error will be referred to as "defendants," this being the position occupied by the parties in the trial court.

The plaintiff instituted suit against the defendants upon a promissory note for the sum of Five Thousand ($5,000.-00) Dollars, payable to the order of Susan E. Mays and by the said Susan E. Mays endorsed and delivered to the plaintiff before maturity for a valuable consideration. (r. pp. 17 and 18.) The consideration forsaid note, as stated in the plaintiff's amended complaint, is as follows:

> "Plaintiff further alleges and charges the truth to be that the said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; that at the time of the execution of the said note a contest was pending before the Commission to the Five Civilized Tribes, which said body at said time had authority under law, to entertain and hear the same between the said Jennie Lee Williams, one of the makers of said note, and Susan E. Mays, the payee therein, to determine which of the said parties had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; that said note was executed by the said Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the abandoning of said contest by the said Susan E. Mays the payee therein, that after said note was executed the said Susan E. Mays did abandon her contest and permit the said Jennie Lee Williams to take the said land

in allotment, which she did, and then said land thereby became and is her separate property.

"Plaintiff further represents that said note has been endorsed and transferred to it by the said Susan E. Mays, for a valuable consideration, the payee mentioned therein, and it is now the legal and equitable owner and holder of said note, and the same is long past due and unpaid, although repeated demands have been made upon the defendants for the payment thereof."

The defendants admitted in their answer to First Amended Complaint (r. p. 22) that the plaintiff is a National Bank duly organized and authorized under the laws of the United States to do a banking business; that on the 4th day of February, 1904, they executed and delivered to Susan E. Mays the note set out in the complaint. The defendants deny that the note was executed for the benefit of the separate estate of Jennie Lee Williams, but the answer admitted that "at the time of the execution of the said note a contest was pending before the Commission to the Five Civilized Tribes between Susan E. Mays, as contestant, and Jennie Lee Williams, as contestee, and that the purpose of said contest as instituted by the said Susan E. Mays was to determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory. * * *" The defendants then denied that said note was executed in consideration of the withdrawal of said contest and denied that the said Susan E. Mays did withdraw said contest. There is no allegation of this character in the complaint. The allegation in the complaint is that the said Susan E. Mays did abandon her contest and permit the said Jennie Lee Williams to take the said land in allotment. There is no denial of the abandonment of the contest, nor is there any denial of the allegation that the said Jennie Lee Williams,

pursuant thereto, was permitted to select said land in allotment and did so select the same and that "the said land thereby became and is her separate property." The defendants then allege that the consideration for the note was the pretended and illegal sale of certain lands situated near Maysville, Indian Territory, as per quit claim deed attached, made in violation of the laws and treaties entered into between the United States and the Choctaw and Chickasaw Tribes of Indians. In the original answer of the defendant, Jennie Lee Williams, (r. p. 12, par. 3) she denies that she is in any manner liable on the note for the reason that the same was given to Susan E. Mays "who was on the 4th day of February, 1904 and is a duly enrolled member of the Chickasaw Tribe of Indians by blood" for certain lands intended as a part of the allotment to be taken by the said Susan E. Mays. The quit-claim deed, which defendants say in their amended answer (r. p. 23) was the consideration for the execution of the note, is as follows:

"Tishomingo, Indian Territory, February 4, 1904.

"Know all men by these presents:

"That I, Susan E. Mays, of Maysville, Indian Territory, for and in consideration of the sum of One Dollar ($1), cash in hand to me this day paid by Samuel L. Williams, Jennie Lee Williams and receipt of which money is hereby acknowledged. And the further consideration of the sum of Five Thousand Dollars ($5,000.00) to be paid me by said Samuel L. Williams, Jennie Lee Williams, on the 4th day of May, 1904, which indebtedness is evidenced by a promissory note of even date herewith, due on the 4th day of May, 1904, bearing interest at the rate of eight per cent. per annum from date signed by S. L. Williams, Jennie Lee Williams and S. T. Williams. I hereby bargain, sell, and convey and relinquish all my right, title or claim which I have in any way in and to the possession of the lands and im-

provements situated upon the N. ½ of the N. E. ¼ of the E. E. ¼ of sec. 16; and the N. E. ¼ of the N. W. ¼ of the S. E. ¼ of section 16, and S. E. ¼ of N. E. ¼ of S. E. ¼ of section 16, all in Township 4 N., Range 2 W., Chickasaw Nation, Indian Territory.

Relinquishing unto the said Samuel L. Williams and Jennie L. Williams all rights which I have in and to the proceeds due or to become due, or from the sales of town property, or my interest in the said townsite, located on the above described premises. Hereby relinquishing to them any claim that I have by any former agreements pertaining to any townsite on said lands above described.

"Witness my hand on this the 4th day of February, 1904. (Signed.) Susan E. Mays." (r. pp. 23 and 24.

A demurrer was sustained to the answer, and the demurrer of the defendants to the amended complaint overruled by the trial court, and, the defendant declining to plead further, judgment was entered in favor of the plaintiff for the amount of the note and interest. An appeal was prosecuted to the United States Court of Appeals, Indian Territory, where the cause was pending at the incoming of Statehood. On the 24th day of December, 1907, a petition for removal of said cause from the Supreme Court of the State of Oklahoma to the Circuit Court of the United States for the Eastern District of Oklahoma was filed with the Clerk of the Supreme Court of the State of Oklahoma, accompanied by a bond for removal. On the 10th day of January, 1908, the plaintiff filed its response to the petition for removal (r. pp. 39 and 42). On the 22nd day of January, 1908, application for removal was denied. (r. p. 44). Thereafter on the 18th day of February, 1908, the Supreme Court of the State of Oklahoma affirmed the judgment of the trial court. (r. pp. 45-47). Writ of Error was allowed by the Chief Justice of the Supreme Court of the State of Okla-

homa, and a transcript of the record lodged with the Clerk of this Court.

For the reasons above stated; that is, not having an opportunity to inspect the brief filed on behalf of Plaintiffs in Error, the questions involved will be presented in the following order:

First: Did the Supreme Court of the State of Oklahoma err in refusing to grant the petition for removal?

Second: Was there a total failure of consideration as to the note sued on?

Third: Whether the agreement by which Susan E. Mays abandoned her contest and executed a relinquishment of her claim to the property involved to Jennie Lee Williams, and the alloting of said land to the said Jennie Lee Williams pursuant thereto, was violative of law, and for that reason rendered the note sued upon illegal and void.

THE SUPREME COURT OF THE STATE OF OKLAHOMA DID NOT ERR IN REFUSING TO GRANT THE PETITION FOR REMOVAL OF THE CAUSE TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

It is most earnestly insisted that no federal question within the purview of the removal act was involved in the disposition of the issues presented to and determined by the Supreme Court of the State of Oklahoma. The only allegation in the petition to remove asserting a federal question is as follows: (record p. 40.)

> "That the said suit involves the construction of treaties, and laws and acts of Congress, concerning the

allotment of lands to the Choctaw and Chickasaw Tribes of Indians under the Acts of Congress approved April 29, 1898 and the Act approved July 1, 1902, commonly known as the "Atoka and the Supplemental Agreements between the Choctaw and Chickasaw Tribes of Indians in the Indian Territory."

This is a bare assertion that the controversy in some way involved the consideration of some particular part of two separate agreements entered into by and between the United States and the Choctaw and Chickasaw Tribes of Indians, each of said agreements containing perhaps thirty to forty pages of printed matter, and no effort being made to call to the attention of the Supreme Court of the State of Oklahoma to what particular part of either of said agreements it was insisted was involved in determining the liability of the defendants upon the promissory note executed by them to Susan E. Mays.

There does not appear in said petition or in the record, any "statement of facts in 'legal and logical form,' such as is required in good pleading, that the suit is one 'which really and substantially involves a dispute or controversy' as to a right which depends upon the construction or effect of the constitution or some law or treaty of the United States."

That the petition for removal presented no sufficient ground for removal of said cause to the Circuit Court of United States for the Eastern District of Oklahoma, the attention of the Court is called to previous decisions of this court as follows:

Carson v. Dunham, 121 U. S. 421;
Defiance Water Co. v. Defiance, 191 U. S. 190;
Western Union Telegraph Co. v. Ann Arbor R. Co. 178 U. S. 239;

Little York Gold Washing & Water Co. v. Keys, 96 U. S. , 199;
Blackburn v. Portland Gold Mining Co. 175 U. S. 571;
Shreveport v. Cole, 129 U. S. 36;
Florida Central & Peninsular R. Co. v. Bell, 176 U. S. 321-331-332;

And to the following decisions of the Court of Appeals for the Indian Territory:

Ikard v. Minter, 4 Ind. Territory App. 214;
Hewlitt v. Hyden, 69 S. W. 839;
Turner v. Gilliland 76 S. W. 253;
Blocker v. McLendon, 98 S. W. 166;
Thomason v. McLaughlin, 103 S. W. 595;

The attention of the Court is especially invited to the following quotation from the opinion of the Court of Appeals of the Indian Territory in the last above mentioned case:

> "It is a well known fact, that many Indians, at the time of the passage of this act, were in possession of large tracts of improved lands in excess of that to which they were entitled; and under the laws and customs of the different tribes at that time this land was lawfully held. The nine months' provision was introduced into the Curtis bill for the purpose of giving them an opportunity of disposing of the excess, and thereby to get some remuneration for the improvements which they, by their labor and industry, had lawfully made upon the lands. *And there is no provision in either of these sections, or anywhere else, that could be construed to deprive an Indian in this territory of the right to dispose of his holdings to another Indian if he desired to do so, in order that he might select his allotment on other lands. The statute did not intend*

that an Indian should be compelled to take his allotment on the land then held by him. He could sell his improvements and holdings to another Indian for allotment, and lay his own on other land which he might find vacant, or which he might in turn purchase from another Indian. This method was adopted almost universally by the Indians, and it was not unlawful as between Indians."

(Italics are ours.)

The Court of appeals of the Indian Territory and the members therefor as trial judges, had to deal for a period of more than ten years with every character of question relating to the rights of members of the Five Civilized Tribes to take, hold and transfer the improvements upon and right of possession to various tracts or parcels of land constituting part of the tribal domain. The experience of these judges gave them an insight into the affairs of the tribe which entitles their opinions to the highest consideration in the disposition of this question.

This Court said in *Arkansas v. Kansas & Texas Coal Company*, 183 U. S. 185, with reference to a petition for removal where it was insisted that the complaint did not state a cause of action upon substantially the same ground that is here insisted, that:

"* * * even assuming that the bill showed upon its face that the relief sought would be inconsistent with the power to regulate commerce, or with regulations established by Congress, or with the fourteenth amendment, as contended, it would only demonstrate that the bill could not be maintained at all, and not that the cause of action arose under the constitution or laws of the United States. When federal questions arise in cases pending in the State courts, these courts

are competent and it is their duty to decide them. If error supervene, the remedy by writ of error is open to the party aggrieved. *Robb v. Connelly*, 111. U. S. 624, 28 Law Edition, page 528."

It is respectfully submitted that the Supreme Court of Oklahoma did not err in refusing to grant the petition for removal.

WAS THERE A TOTAL FAILURE OF CONSIDERATION AS TO THE NOTE SUED UPON?

As will appear from the statement of facts, there was a contest pending between Susan E. Mays and Jennie Lee Williams, the purpose of which was to determine which of the parties had the right to select in allotment the lands therein involved. Thhat this was a *bona fide* controversy is nowhere challenged. It is alleged in the complaint that the purpose of the contest was "to determine which of the said parties had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory."

In the joint answer of the defendants it is stated that "at the time of the execution of the said note a contest was pending before the Commission to the Five Civilized Tribes between Susan E. Mays, as contestant, and Jennie Lee Williams, as contestee, and the purpose of said contest, as instituted by the said Susan E. Mays, was to determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory."

It is directly alleged in the defendant's original answer that Susan E. Mays was a member by blood of the Chickasaw Tribe of Indians, which allegation was admitted to be true; that both Jennie Lee Williams and Susan E. Mays were members of either the Choctaw or Chickasaw Tribe of Indians is evidenced by the fact that they were permitted to engage in a controversy as to the selection in allotment of certain lands which could be selected only by recognized enrolled members of the Choctaw or Chickasha Tribe of Indians; that the controversy was in truth and in fact to determine which of the parties to the contest proceeding, to-wit, Susan E. Mays, contestant, or Jennie Lee Williams, contestee, was entitled to select the land in allotment. It is nowhere charged or contended that the contest was not in good faith and for the purpose of establishing the rights of the contestant, Susan E. Mays.

It is also stated that the Commission had jurisdiction to hear and determine the contest. It was insisted by counsel for defendants in their brief in the Supreme Court of the State, that under the law members of the Choctaw and Chickasaw Tribe of Indians could not settle any controversy arising over the right of such members to select in allotment any particular tract of parcel of land. It was further insisted that if a controversy had once arisen between two Indians, it was the duty of the Commission, if the case was pending before it, to decide the matter without regard to the wishes of the contestants or any agreement that they might make with reference thereto; or carrying the argument there presented to its legitimate result, if a controversy actually existed between two Indians over the right to allot a certain parcel of land even in the absence of a contest, it was the duty of the Commission to harness up such Indian citizens, with or without their consent, and decide the issues

between them in accordance with the judgment of the Commission.

It was insisted in this same brief that the courts of the United States and their successors, the courts of the State of Oklahoma, should take judicial notice of the rules and regulations of the Department of the Interior regulating contests between members of the Five Civilized Tribes in the matter of selection in allotment of lands.

Rule 14 quoted by counsel for defendant in their brief in the Supreme Court of the State of Oklahoma is as follows:

> "Rule 14—DISMISSAL. Cases will be called for trial on the day and at the hour fixed for the hearing, and if the CONTESTANT makes no appearance the case will be dismissed for want of prosecution, in which event, written notice of such action, by personal service or registered letter, shall be given by the Commission to the parties at interest, or their attorneys."

Susan E. Mays was the contestant, Jennie Lee Williams, the contestee. What was the effect under this rule of the failure of the contestant to appear and prosecute her contest and an award of the land to the contestee.

Defendants, at the time the note was executed and the contest abandoned, were of the opinion that plaintiff's claim to the premises in controversy was of the value of five thousand ($5,000.00) dollars. It was not until after the Commission had awarded the land to Jennie Lee Williams, and her title had passed beyond further contest that defendants discovered that there was a failure of consideration, or that they had been engaged in a wicked and illegal transaction.

Can the court say that in abandoning this contest and in executing the quit-claim deed, Susan E. Mays abandoned

no rights whatever, and that the said Jennie Lee Williams received no benefits whatever?

Compromises are favored in law. If a case is tried one party must ultimately lose. If compromises could be avoided at the instance of the party who would have been successful if the case had been tried, no compromise would ever stand. If, in a trial upon the compromise obligation, the merits of the original controversy could be tried, compromises would be worse than useless in the settlement of litigation.

That compromises are always regarded with favor we regard as too well established to be open to controversy.

The Supreme Court of Arkansas has so declared in numerous instances.

We quote first from the opinion in the case of *Buckner vs. McElroy*, 31 Arkansas, page 634, as follows:

> "While it is true that a right of action does not arise on a mere naked promise, yet if there be any legal consideration for the promise, the court will not inquire into its adequacy, the law having no means of deciding upon this matter, and it being considered unwise to interfere with the facility of contracting and the free exercise of the judgment and will of the parties by not allowing them to be the judges of the benefits to be derived from their bargains, provided there be no incompetency to contract and the agreement violates no rule of law. It is indeed necessary that the consideration be of some value. But it is sufficient if it be of slight value only. E. G.—The compromise or abandonment of a doubtful right is a sufficient consideration for a contract even when it turns out that the point given up was in truth against the promisee. First Chitty on Contracts, 11 Ed., p. 29. In general, a waiver of any legal or equitable right at the request

> of another, is a sufficient consideration for a promise. 1 Parsons on Contracts, p. 444."

We quote further from the opinion of that court in the case of *Mason et al. vs. Wilson et al.*, 43 Arkansas, page 177, in reference to compromises:

> "And the compromise of a disputed claim is a sufficient consideration to support an express promise, although there may have been no merit or foundation for such claim."

In the case of *Richardson et al. vs. Comstock*, 21 Arkansas, page 70, the Supreme Court approved the action of the trial court in charging the jury as follows:

> "That if they believe from the evidence and admissions of the plaintiff that the note was given in compromise of a doubtful claim, it is some consideration in law, and they will find for the plaintiff."

The following language is used by the court in its opinion in the case of *Burton and Townsend vs. Beard and Wright*, 44 Arkansas, page 556:

> "The compromise of a disputed claim is a sufficient consideration to support an express promise to pay the sum agreed upon as was determind in *Richardson v. Comstock*, 21 Arkansas, 69, which was similar in some of its features to the present case."

The court, in the case of *Springfield & Memphis Ry. Co. vs. Allen*, 46 Arkansas, page 220, uses the following language in reference to a compromise:

> "After the voluntary adjustment of a matter in dispute, the contest is ended and the disputed ques-

tion cannot again be raised by the parties. Compromises avoid litigation and are encouraged by the law, and when legally made they are binding and are not disturbed by the courts."

The Supreme Court of the United States in the case of *Hennessey vs. Baker*, 137 United States, page 78, Law Edition Book 34, page 605, uses the following language in reference to a compromise:

> "It is the case of a compromise of a disputed claim, the parties dealing with each other upon terms of equality holding no relations of trust or confidence to each other, and each having knowledge or having the opportunity to acquire knowledge of every fact bearing upon the question of the validity of their respective claims. *Cleveland vs. Richardson*, 132 U. S. 318; (33—284). Such a settlement ought not to be overcome, even if the court should now be of the opinion that the party complaining of its surrendered rights that the law, if appealed to, would have sustained."

In the case of *Mills County, Iowa, vs. Burlington and Missouri River R. R. Co.*, 107 U. S. 557, Law Edition Book 27, page 578, the parties entered into a compromise while the case was pending in the Supreme Court of the United States. That court declined to vacate the compromise in favor of the party who lost by the settlement, but who would have won by the judgment of the court.

The Supreme Court of Illinois in the case of *Knotts et al. vs. Preble*, 50 Ill., page 226, uses the following language in reference to the binding effect of a compromise:

> "It is no doubt true, that a promise made to settle a doubtful right or to get rid of a probable liability is binding and made upon a good and valuable consider-

ation and it is no defense for the promissor to say that he was mistaken in regard to his liability."

The Supreme Court of Kansas, in a very elaborate opinion by Judge Brewer, in the case of *Atchison, Topeka & Santa Fe Railway Company vs. A. D. Starkweather*, 21 Kansas, 238, declares the binding effect of compromise agreements in the following language:

> "May he now come into a court of equity and obtain a decree canceling and destroying the title which he has thus contracted to purchase? We think not. The contract was valid and binding upon both parties. It was a compromise of contesting claims; the termination of litigation and the purchase of an outstanding and rival title. It will not do to say that the plaintiff had the better right; that it was the duty of the defendant, having only a naked legal title, and holding the same simply in trust for the owner of the full equitable title, to convey the same to such owner, and that therefore a conveyance, or promise to convey, was no consideration for a promise on the part of such owner, for the plaintiff was not in fact the owner of the full equitable title and might never become such; and again, and chiefly after a compromise, made with full knowledge and without fraud or deception, of a *bona fide* controversy, the courts will not inquire which of the two contestants had the better right. It is enough that they had a controvery and have settled it, and the fact of the dispute upholds the settlement and its various stipulations. Upon such a settlement the court does not inquire what the facts really are. It accepts the statements which the parties have made as conclusive upon them."

The decision in this case is particularly applicable because the compromise settlement was of a contest proceeding before the land office in its details very much like the

one under consideration. The case was reversed with instructions to the court below to enter judgment in accordance with the terms of the compromise settlement.

The same result is reached by the Supreme Court of Texas in the case of *Little vs. Allen*, reported in 56 Texas, at page 133.

Authorities might be multiplied indefinitely, but we deem it unnecessary.

Before concluding this phase of the controversy we quote as follows from page 19 of brief of counsel for defendant before the Supreme Court of Oklahoma:

> "The allegations established these facts: There was a contest pending between the parties; the plaintiff's assignor abandoned the same; That she permitted Jennie Lee Williams to take the said land in allotment. Now, if it is within the power of a party to a contest to surrender rights to the other, a consideration undoubtedly passed."

Can it be contended, in the face of rule 14 of the land office that the abandonment of the contest was not a surrender of the rights of Susan E. Mays in and to the property in controversy? It seems to us that this admission is a confession of the correctness of the judgment of the trial court.

The burden was upon the defendants to plead every fact material to the establishment of their supposed defense, and not upon the plaintiff in suing upon the note to plead all the facts touching the matter in controversy, which was compromised by the parties. The rule with reference to public lands could by no stretch of judicial authority, be made to apply to the lands of the Choctaw and Chickasaw Tribes of Indians.

Settlement may be made upon public lands for the purpose of acquiring preemption or homestead rights. Certain proceedings are required to be had within a given time after the settlement is made, and if not had within that time the settler becomes a trespasser and without any right whatever. Under both the homestead and preemption laws personal residence for a given time, as well as improving the land were conditions precedent to the right to enter the lands or preempt the same. This personal occupancy of the land necessarily could not be the object of barter and sale. Settlement and development of the lands of the Choctaw and Chickasaw tribes of Indians have been the purposes sought to be accomplished since the location of these tribes in the Indian Territory. Every member of either tribe has not only had the right to settle upon any tribe lands, but has been encouraged to do so. Under the treaties between the tribes and the United States the right to allot certain land depends upon the ownership of the improvements and not upon the occupancy of the premises.

There is not now, nor has there ever been, any prohibition against a member of either tribe selling his improvements and right of occupancy. This right has been exercised FROM TIME IMMEMORIAL. These transfers have been sustained by the Court of Appeals of the Indian Territory in numerous instances. No attorney or party has ever yet felt himself in such need of a defense or cause of action as to be driven into the untenable position that such transfers are prohibited by law.

Counsel for defendants, on page 28, of their brief, before the Supreme Court of Oklahoma, make the following quotation, and cite numerous authorities at random and apparently taken from a digest, to wit:

> "An agreement to pay a certain sum in consideration of improvements previously made on United States lands, and of the other's promise not to enter the land, is not supported by a sufficient consideration."

Among the citations to this contention are four Arkansas cases, the first of which is *McFarland vs. Matthews*, 10 Ark. 560. In that case McFarland owned certain improvements upon public lands which he sold to Matthews. Matthews failed to pay for the improvements, and McFarland entered the land and purchased it from the government of the United States. Matthews, while in possession, had made certain improvements. Matthews contended that after McFarland entered and purchased from the Government that McFarland had promised to pay him for the improvements that he (Matthews) made on the premises while occupying the same. McFarland insisted that the improvements went with the land; that he had acquired title to the land and the improvements from the United States Government, and that the promise made subsequent to the time that he became the owner of such land and improvements was without consideration and void.

The Supreme Court of Arkansas, after discussing a number of the cases cited by counsel for defendants and holding that improvements upon public lands are recognized as property by the laws of Arkansas and are therefore salable and constitute a sufficient consideration for an agreement to pay for the same, used the following language:

> "These enactments relate solely to improvements upon public lands, and, as a matter of course, cannot be so construed as to operate upon such improvements after the title to the same has passed out of the general government and vested in an individual. We are therefore clearly of the opinion that the promises in

this case HAVING BEEN MADE SUBSEQUENT TO THE PURCHASE OF THE LAND FROM THE GOVERNMENT TO PAY FOR IMPROVEMENTS, MADE BEFORE IS A MERE NUDUM PACTUM, AND CONSEQUENTLY VOID.

The basis of this decision is that the agreement was made not while there was a controversy, but after the title had become absolutely vested in McFarland, and could have amounted to nothing more than an agreement to donate, which was properly held unenforcible.

In *Hughes vs. Sloan*, 8 Arkansas, 149, the Supreme Court of Arkansas, specifically held that an agreement to pay for improvements upon public land was based upon sufficient consideration, and was valid and binding.

The cases of *Carr vs. Allen*, 5 Blackford, 63, *Carson vs. Clark*, 3 Scammon, 113, are based upon the statutes in force prior to 1834, which made it a crimimal offense to make improvements upon public lands. Neither the case of *Black vs. Smith*, 11 Arkansas, 443, nor that of *Floyd vs. Ricks*, 14 Arkansas, 290, throw any light whatever upon the controversy.

We quote as follows from the opinion in the case of *Gaines vs. Rector*, 26 Arkansas, page 192, cited by counsel for defendants:

> "In *Caine vs. Leslie*, 15 Arkansas, 312, the court says: 'A sale of an improvement upon public land is recognized by statute, and the purchaser acquires a possessory right which the law protects and which is good against everybody but the Government or its grantee.' *Hughes vs. Sloan*, 8 Arkansas 146, *McFarland v. Matthews*, 10 Arkansas, 560. The Federal Government, while it punishes those who are purely trespassers and commit depredations upon the public land, has uni-

formly rewarded those who, in good faith, have made valuable improvements."

This decision was affirmed by the Supreme Court of the United States in the case of *Gaines vs. Hale and Rector*, 93 United States, page 3, L. Ed. Book 23, page 782.

The defendants are very much in the position of one David Randon who was sued by one Thomas Toby upon two promissory notes given by Randon for the purchase price of certain slaves, in the Republic of Texas, in the year 1841. After using and selling the slaves he suddenly became horrified that he had been inveigled into an illegal purchase of human beings, and set up this defense to the note sued on. He insisted that Toby had, in violation of law, introduced the negroes into the State of Texas.

The Supreme Court of the United States, in its opinion in the case (*Randon v. Toby*, 11 Howard, 493, L. Ed. Book 13, page 796), uses the following language.

> "On the contrary the defendant held and enjoyed the negroes and sold them and received their value; and the negroes are held as slaves to this day, if alive, for anything that appears on the record as respects the defendant, therefore he has received the full consideration for his notes, the title to his property has never been questioned nor has he been convicted from possession, or threatened with eviction. Consequently, he has no right to set up a defense under the implied warranty of title, or for want of consideration.
>
> "If the defendant should be sued for his tailor's bill, and come into court with the clothes made for him on his back, and plead that he was not bound to pay for them, because the importer had smuggled the cloth, he would present a case of equal merits, and parallel with the present; but would not be likely to have the verdict of the jury or judgment of the court in his favor."

The defendants seem to have repented their transaction to the same extent as did Randon in the Toby case. In both cases the repentence extended to an attempted repudiation of the burden of the transaction, but neither became sufficiently penitent to surrender the "tainted" property acquired through the alleged illegal transaction.

THE TRANSACTIONS INVOLVED WERE NOT PROHIBITED BY LAW.

The agreement by which Susan E. Mays abandoned her contest and executed a relinquishment of her claim to the said Jennie Lee Williams was not violative of any law and was not for any such reason illegal and void.

Here again we will have to refer to the position taken by counsel for defendants in the Supreme Court of the State of Oklahoma because of the fact that we have not been able to see the brief filed in this court.

It is asserted in the assignment of errors that the agreement to abandon the contest and the execution of the quitclaim deed, either one or the other or both considered together constituted an illegal transaction, which operated to destroy the validity of the note sued on in this action. As heretofore said we have had no opportunity to inspect the brief of counsel in this court in support of this assignment. In the Supreme Court of the state there was a rambling, general argument without any definite citation in support of the contention that somewhere in some undisclosed part of the Act of June 28th, 1908, commonly known as "The Atoka Agreement," or in the Act of July 31st, 1902, commonly known as "The Supplemental Agreement," there was

some provision which prohibited one member of any of the Five Civilized Tribes in the Indian Territory conveying his improvements upon or right to possession of tribal lands to another member of the tribe, and that a compromise of a contest proceeding instituted and conducted in good faith operated as such conveyance and that the consideration therefor was illegal and void. It would serve no useful purpose to undertake to guess what the contention will be in this Court.

We have searched in vain through both of these agreements, and have failed to find one line that prohibits a member of either of said tribes from selling his improvements upon tribal lands or his right to possession thereto to another member of the Tribe. Will it be presumed in the absence of any statute to that effect that Congress intended that the members of these Tribes should not be permitted to adjust their allotments by acquiring the improvements of other members upon different tracts of land? Will it be further presumed that Congress intended that every Indian must allot the land upon which he had his improvements at the time of the ratification of the treaty, however poor and worthless such land may have been, and that Congress further intended to prohibit any member of the Five Civilized Tribes from buying (and of course, it would be if every other Indian were prohibited from selling) any other improvements or of exercising the right to acquire any other lands than those held by him at the time of the ratification of the treaty? Such an argument reduces itself to an absurdity. It is so completely and thoroughly answered by the Court of Appeals for the Indian Territory in the opinion in the case of *Thomason v. McLaughlin*, 103 S. W. 595., that we feel it sufficient to again quote cetain parts of that opinion. Mr. Justice Clayton, speaking for the Court in response to the

contention that certain lands had been unlawfully disposed of, as here contended, uses the following language:

> "The ninth months' provision was introduced into the Curtis Bill for the purpose of giving them an opportunity of disposing of the excess, and thereby to get some remuneration for the improvements which they, by their labor and industry, had made lawfully upon the lands. And there is no provision in either of these sections, or anywhere else, that could be construed to deprive an Indian in this territory of the right to dispose of his holdings to another Indian if he desired to do so, in order that he might select his allotment on other lands. The statute did not intend that an Indian should be compelled to take his allotment on the land then held by him. He could sell his improvements and holdings to another Indian for allotment, and lay his own on other land which he might find vacant, or which he might in turn purchase from another Indian. This method was adopted almost universally by the Indians, and it was not unlawful as between Indians."

Reference is also made to the case of *Turner v. Gilliland*, 76 S. W., 253, and *Blocker v. McLendon*' 98 S. W. 166. Not only was there nothing illegal in the transaction, but the defendants having accepted, appropriated, used, and enjoyed the benefits accruing by virtue of the settlement entered into and having appropriated the proceeds from the sale of certain property as provided in the quit-claim deed are now estopped to controvert the rights of the complainants to recover upon the note sued on herein.

The judgment in the contest proceeding had become final before the defense of want of consideration or illegality of the compromise was attempted to be interposed as a defense to the action on the note. Jennie Lee Williams' title to the land involved had become absolute and had

passed beyond the domain of contest. If she can avoid the payment of this note by voiding the compromise Susan E. Mays is absolutely without a remedy, and she has been deprived of her right to contest the filing upon the lands in controversy by the apparently prearranged understanding of the defendants to accomplish this result by pretending that they were in good faith compromising the matter in controversy. Susan E. Mays was prosecuting a contest in good faith to acquire the right to take in allotment certain lands as a member of the Chickasaw Tribe of Indians. Her rights were of such a serious nature that defendants were willing to pay the sum of Five Thousand Dollars to secure a compromise of the same. The defendants, Samuel L. and S. T. Williams, so far as the records disclose, were white men amply capable of taking care of their own interests and the interest of the wife of Samuel L. Williams, their co-defendant, Jennie Lee Williams. The defendant, Susan E. Mays is an Indian by blood as alleged by the defendants, and possibly incapable of properly taking care of her interests in dealing with men of such character, as the record discloses two of the defendants in this case to be.

It is respectfully submitted that the judgment of the Supreme Court of the State of Oklahoma was in all things correct and should be affirmed.

S. T. BLEDSOE.
J. B. THOMPSON.
Attorneys for Defendants in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 130.

JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

FIRST NATIONAL BANK OF PAULS VALLEY, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

S. T. BLEDSOE,
J. B. THOMPSON,
Attorneys for Defendant in Error.

(21,113.)

IN THE

SUPREME COURT OF THE UNITED STATES.

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JENNIE LEE WILLIAMS, S. L. WILLIAMS, AND S. T. WILLIAMS, PLAINTIFFS IN ERROR,

vs.

THE FIRST NATIONAL BANK OF PAULS VALLEY, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

I.

The quotations from the answer of the defendants, set forth on pages 3 and 4 of the original brief for defendant in error, are taken from the original answer to the amended complaint appearing on pages 22 and 23 of the record. The language is identical with the amended answer to the first amended complaint, appearing on pages 26 and 27 of the record.

The allegation in the amended complaint (R., p. 18) is that the "said Susan E. Mays did *abandon* her contest, and "permit the said Jennie Lee Williams to take the said land

" in allotment, which she did, and the said land thereby be-
" came and is her separate property." The denial in paragraph 1 of the amended answer to the amended complaint is: "And they deny that the said Susan E. Mays did *with-*
" *draw* her contest and permit the said Jennie Lee Williams
" to take the said lands in allotment, and that by reason of
" the *withdrawal* of the said Susan E. Mays from said con-
" test that said land became and was the separate property
" of the said defendant, Jennie Lee Williams."

The denial is not at all responsive to the allegations contained in the complaint. That this is not a technical objection and presented to this court for the first time attention is called to the fact that in paragraph 3 of the demurrer to the amended answer and first amended complaint (R., 29-30), the plaintiff specially demurred to the part of the answer above set out, assigning as a reason for the insufficiency thereof that "the denial of a withdrawal is immaterial
" and does not deny the allegations contained in the com-
" plaint, and is drawn in such form, and that by "being
" joined to the other clauses it does not amount to a denial
" of any of the facts contained in said complaint."

Under the condition of the record, therefore, and the statutes in force in the Indian Territory at that time, there being no specific denial of the allegation that Susan E. Mays did abandon the contest, and that Jennie Lee Williams was thereby permitted to take the land in allotment, the allegation stands confessed.

It is insisted by counsel for the defendants that the second paragraph sufficiently charges facts to establish the illegality of the consideration for the note. The only allegation of fact in the last answer, if it may be *treated* as an allegation, in reference thereto, is the following language:

> "But these defendants allege and charge the truth
> " to be that sole and only consideration of said note,
> " as aforesaid, was the pretended and illegal sale of
> " certain lands situated near Maysville, in the Chick-

" asaw Nation, Indian Territory, by the said Susan E. " Mays, to the said Jennie Lee Williams, * * *" (R., 27).

Then follows the allegation that this was in violation of the Chickasaw and Choctaw supplemental agreement of 1902 and the "Atoka Agreement" of 1898. Attached to the answer, and as an exhibit to this paragraph, is the agreement which, it is claimed, constitutes the illegal conveyance. That conveyance is made by Susan E. Mays, an enrolled member of the Chickasaw Tribe by blood, to Jennie Lee Williams, an enrolled member of the tribe by blood, and S. L. Williams, an intermarried citizen of the tribe and a white man (R., pp. 12-13). The paper referred to is the quitclaim or relinquishment of the interest of Susan E. Mays "in and to the " possession of the lands and improvements situated" thereon, and to the proceeds due and to become due "from the sales of " town property, or my interest in the said townsite located " on the above-described premises" (R., 28).

This is the particular alleged illegal transaction complained of in paragraph 2 of the amended answer. It is submitted that under none of the authorities is this relinquishment invalid or in violation of law. It is insisted that the consideration of five thousand dollars ($5,000) is unreasonably large, in consideration of the amount of land involved. It is alleged in the amended complaint and admitted in the answer that the lands adjoin the town of Maysville. The record is silent as to the extent of the improvements thereon. They may have been worth more than the five thousand dollars ($5,000). That the location of the land, with reference to the town and the improvements thereon, were of such value that the defendants considered Susan E. Mays' interest therein worth five thousand dollars ($5,000) at the time of the settlement of the contest controversy is evidenced by the agreement of the parties, including the note and relinquishment.

It was contended that the case of *McLaughlin vs. Ardmore Loan and Trust Company* (95 Pac., 779), is authority for the contention made by plaintiffs in error. The evidence in that cause established that McLaughlin was "in possession of more in value than that of 320 acres of average allotable land in said nation than he could hold for himself and three children," and that the vendee was also a corporation incapable of owning or acquiring improvements upon lands of the Five Civilized Tribes. The court held this note void, because the evidence established that it was given directly for improvements upon an "excessive" holding.

The case of *Combs vs. Miller* (103 Pac., 590) was decided upon the same ground, and for the same reason; that is, in the answer to the suit on the note it was specifically pleaded that the improvements for which the note was given were upon lands actually held in excess of those held by plaintiff as his share of allotable land and of his allotment. Both of the last-mentioned decisions are in entire harmony with the decision of the Supreme Court of the State of Oklahoma in the case at bar. There is no allegation in the pleadings that Susan E. Mays held a single acre of land, in either the Choctaw or Chickasaw Nation, in addition to the lands in contest. If defendants had desired to tender an issue that the note was given for lands "excessively" held they should have pleaded the facts showing such to be the case. They did not undertake to do this, for the very evident reason that they could not truthfully do so. Therefore, all that part of the brief of defendants relating to that subject, appearing on pages 13-22 of the brief of defendants in error, is an argument without the slightest suggestion in the record of a foundation to support it.

Certain decisions of the Commission to the Five Civilized Tribes are cited on pages 15 and 16 of the brief of defendants to the point that the Commission to the Five Civilized Tribes did not recognize conveyances made by one member of a tribe to another member of the same tribe of improvements

upon tribal lands. That this contention is wholly without merit, reference is made to the various memorandum decisions appearing on pages 139-157 of the Tenth Annual Report of the Commission to the Five Civilized Tribes, being the report for the year 1903, and pages 188-193 of the Eleventh Annual Report of the Commission to the Five Civilized Tribes, being the report for the year 1904.

Counsel for defendants cannot hope to sustain their contention upon the record. If they hoped to do so, it would not have been necessary to undertake to divert the attention of the court to issues not raised in the record.

It is said by counsel for defendants that the allegations in the amended answer that the consideration of the note was the execution of the relinquishment, marked Exhibit "A," is in conflict with the allegation of the amended complaint that the consideration of the note was the abandonment of the contest. There is nothing at all inconsistent in these two allegations. The relinquishment would have very properly followed the execution of the note, as the evidence furnished by the contestant to the contestee of her consent that the contestee should take the lands in allotment.

Since the preparation of the original brief on behalf of defendant in error, a motion to dismiss the writ of error has been filed upon the ground that no Federal question is involved.

It is respectfully insisted that this contention is well taken in view of the authorities cited in the original brief of the defendant in error, and of the references herein made. This is also confirmed by the grounds assigned in the petition for removal, to wit:

> "that the consideration for said note was that the
> "payee thereof should cease to prosecute further and
> "abandon a certain contest then pending before the
> "Commissioner to the Five Civilized Tribes, in which
> "the payee herein was contestant, and the appellee
> "was contestee."

It is therefore respectfully submitted that the Supreme Court of the State of Oklahoma, as is evidenced by the decision in *Combs vs. Miller*, and *McLaughlin vs. Ardmore Loan and Trust Company*, has most carefully guarded and protected the interests of the Indians, and the administration by the Government of the United States of the property of the tribes, in the allotment thereof in severalty, where these questions have, in fact, been involved, but that they have declined to permit white men to avoid their obligations, while holding the benefits thereof, on the spurious plea of illegality of consideration; or to hold that to require them to pay their obligations for which they have received value, interferes with the administration by the Government of the affairs of the tribe.

Respectfully submitted.

S. T. BLEDSOE,
J. B. THOMPSON,
Attorneys for Defendant in Error.

WILLIAMS *v.* FIRST NATIONAL BANK OF PAULS VALLEY.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 130. Argued March 9, 1910.—Decided March 21, 1910.

A question of a Federal nature is raised by the contention, if denied by the state court, that a right or privilege exists under a Federal statute to remove the case into the Federal court.

The power of this court to review cases removed from the United States courts for Indian Territory to the state courts of Oklahoma under the provisions of the Enabling Act as amended by act of March 4, 1907, c. 2911, 34 Stat. 1287, is controlled by § 709, Rev. Stat.

Where plaintiff's right to recover is not predicated on any Federal right, the fact that the defense is that the transaction was prohibited by Federal law does not make the case one arising under the Constitution or laws of the United States. *Arkansas* v. *Kansas & Texas Coal Co.*, 183 U. S. 185.

Compromises of disputed claims are favored by the courts, *Hennessey* v. *Baker*, 137 U. S. 78, and the consideration on which a compromise is based will be sustained unless there is an express or implied statutory prohibition against the transaction.

There is no statutory prohibition against a member of either the Choctaw or Chickasaw tribe, not holding any excess of lands subject to allotment, selling his improvements upon tribal land or abandoning his right of possession thereof to another Indian. *Thomason* v. *McLaughlin*, 103 S. W. Rep. 595, approved.

Where the asserted Federal questions are not frivolous, but are so devoid of substance as to be without merit the writ will not be dismissed but the judgment will be affirmed.

20 Oklahoma, 274, affirmed.

THE defendant in error commenced this action in the United States Court for the Southern District of Indian Territory. The now plaintiffs in error were named as defendants. S. L. and S. T. Williams are brothers, and Jennie L. Williams is the wife of the defendant S. L. Williams. Recovery was

sought by the bank, as an innocent holder for value, before maturity, upon a note for five thousand dollars, executed by the defendants, dated February 4, 1904, and payable to the order of Susan E. Mays, with interest. The consideration for the execution of the note was thus alleged in an amended complaint:

"Plaintiff further alleges and charges the truth to be that the said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; that at the time of the execution of said note a contest was pending before the Commission to the Five Civilized Tribes, which said body at said time had authority under law to entertain and hear the same between the said Jennie Lee Williams, one of the makers of said note, and Susan E. Mays, the payee therein, to determine which of the said parties had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; that said [note] was executed by the said Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the abandoning of said contest by the said Susan E. Mays, the payee therein; that after said note was executed the said Susan E. Mays did abandon her contest, and permit the said Jennie Lee Williams to take the said land in allotment, which she did, and the said land thereby became and is her separate property."

The amended complaint was demurred to on the following grounds:

"1st. Because the said amended complaint does not state facts sufficient to constitute a cause of action, and does not entitle plaintiff to the relief prayed for.

"2d. Because the transferee of a nonnegotiable note must aver and prove consideration for the transfer; and the note in suit is nonnegotiable, and plaintiff fails to aver any consideration whatever for the transfer.

"3d. Because section 16 of the Atoka agreement provides the only legal way Indian lands may be sold, and where a statute positively declares a thing cannot be done the law

will not suffer its policy and purpose to be thwarted by any subterfuge or ingenious contrivance clothed with the semblance of legality. This was a short-cut attempt to sell 40 acres of land, title to which was in the Indians.

"4th. Because the Dawes Commission had exclusive jurisdiction to determine all matters in controversy between members of the tribes as to their right to select particular tracts of land for allotment, and to determine the rights, if any, of Mrs. Susan Mays in the contest for said 40 acres of land; but the original payee of the note sued on, for a bare promise violated the law in such case made and provided.

"5th. Because it appears from the allegations in said complaint that the note sued on herein and for the amount and accrued interest of which the plaintiff seeks a judgment against the defendants was executed pursuant to an alleged contract entered into by and between the defendant, Jennie Lee Williams, and Susan E. Mays, in that said complaint shows that the sole and only consideration of said note was the agreement of the said Susan E. Mays to abandon a certain contest which she had instituted against the said defendant Jennie Lee Williams, before the Commission to the Five Civilized Tribes at Tishomingo, wherein she claimed the right to select as a part of her allotment certain premises which had been filed on and selected by the said Jennie Lee Williams as a member of the tribe of Chickasaw Indians.

"6th. Said complaint upon its face shows that the said note was executed by the defendants to the said Susan E. Mays for an illegal consideration and was executed without any consideration whatever, and of all this the defendants pray the judgment of the court."

The demurrer was overruled. In an amended answer, thereafter filed, after admitting the making of the note and averring that it was executed by Jennie Lee Williams as principal and by the other defendants as sureties, the following allegations were made:

"1st. The defendants admit that heretofore, to wit, on the

4th day of February, 1904, they executed and delivered unto Susan E. Mays their promissory note for the principal sum of five thousand dollars, due ninety days from date, and they admit that said note as so executed is copied in the plaintiff's first amended complaint, and that the same is witnessed by James A. Cotner, and they admit that the defendant Jennie Lee Williams is a married woman and the wife of the defendant S. L. Williams, but they allege and charge that said note was executed by Jennie Lee Williams as principal and S. L. Williams and S. T. Williams as sureties.

"These defendants deny, as alleged in the complaint, that said note was executed by the said Jennie Lee Williams for the benefit of her separate estate; but they admit that at the time of the execution of the said note a contest was pending before the Commission to the Five Civilized Tribes between Susan E. Mays, as contestant, and Jennie Lee Williams, as contestee, and that the purpose of said contest, as instituted by the said Susan E. Mays, was to determine whether she or the said contestee had a right to take in allotment a certain tract of land located adjacent to the town of Maysville, Indian Territory; but these defendants deny that said note was executed by the said defendants Jennie Lee Williams, S. L. Williams and S. T. Williams, in consideration of the withdrawal of the said Mrs. Susan E. Mays from said contest, as aforesaid; and they deny that the said Susan E. Mays did withdraw her contest and permit the said Jennie Lee Williams to take the said lands in allotment; and that by reason of the withdrawal of the said Susan E. Mays from said contest that said land became and was the separate property of the said defendant Jennie Lee Williams; but defendants allege and charge the truth to be that since the execution and delivery of said note as aforesaid that said Commission aforesaid has duly awarded and delivered to said defendant Jennie Lee Williams certificate to said land.

"2d. But these defendants allege and charge the truth to be that sole and only consideration of said note, as aforesaid,

was the pretended and illegal sale of certain lands situated near Maysville, in the Chickasaw Nation, Indian Territory, by the said Susan E. Mays to the said Jennie Lee Williams; that said pretended sale was illegal, fraudulent and void; that the same was made, executed and delivered by said Susan E. Mays to said Jennie Lee Williams in violation of and in contravention of the provisions of a treaty made by and between the United States and the Chickasaw and Choctaw tribes of Indians in the year 1902, which said treaty was ratified by a majority vote of said tribes and by act of the Congress of the United States, and in violation of and in contravention of the provisions of a treaty of the United States and the said tribes of Indians, made, concluded and ratified by said tribes and the Congress of the United States in the year 1898, and known as the 'Atoka Agreement,' and that by reason thereof said pretended conveyance from said Susan E. Mays to said Jennie Lee Williams is illegal, fraudulent and void, and of no effect, and that by reason of the premises aforesaid the said note herein sued for, when executed, was and hitherto since has been, illegal and void and without consideration. A copy of said conveyance is hereto annexed and marked 'Exhibit A,' and made a part hereof.

"3d. And still further answering herein, the defendants say that the plaintiff ought not further prosecute and maintain this action against them because they allege and charge that at the date of the execution of said conveyance from Mrs. Susan E. Mays to Jennie Lee Williams, as aforesaid, said Susan E. Mays did not have the possession, right or title to the premises in said conveyance described, and did not own the improvements situated thereon, and had no interest therein which she could convey to the defendant Jennie Lee Williams, and that the consideration of the note herein sued on for that reason has totally failed; all of which the defendants are prepared and willing to verify, and they put themselves upon the country and pray the judgment of the court that they be discharged, with their costs."

Exhibit "A," omitting the acknowledgment, reads as follows:

"TISHOMINGO, INDIAN TERRITORY, February 4, 1904.

"Know all men by these presents:

"That I, Susan E. Mays, of Maysville, Indian Territory, for and in consideration of the sum of one dollar, ($1), cash in hand to me this day paid by Samuel L. Williams, Jennie Lee Williams, and receipt of which money is hereby acknowledged, and the further consideration of the sum of five thousand dollars, ($5,000,) to be paid me by said Samuel L. Williams, Jennie Lee Williams, on the 4th day of May, 1904, which indebtedness is evidenced by a promissory note of even date herewith, due on the 4th day of May, 1904, bearing interest at the rate of eight per cent per annum from date, signed by S. L. Williams, Jennie Lee Williams and S. T. Williams. I hereby bargain, sell, and convey and relinquish all my right, title or claim which I have in any way in and to the possession of the lands and improvements situated upon the N. ½ of the N. E. ¼ of the S. E. ¼ of sec. 16, and the N. E. ¼ of the N. W. ¼ of the S. E. ¼ sec. 16, and the S. E. ¼ of the N. E. ¼ of the S. E. ¼ of sec. 16, all in township 4 N., range 2 W., Chickasaw Nation, Indian Territory.

"Relinquishing unto the said Samuel L. Williams and Jennie L. Williams all rights which I have in and to the proceeds due or to become due, or from the sales of town property, or my interests in the said townsite, located on the above described premises, hereby relinquishing to them any claim that I have by any former agreements pertaining to any townsite on said lands above described.

"Witness my hand on this the 4th day of February, 1904.

"SUSAN E. MAYS."

A demurrer to the amended answer was sustained and, the defendant refusing to plead further, judgment was entered on April 14, 1905, in favor of the bank for the full amount of the note, with interest and costs. A writ of error was allowed

and the cause was taken to the United States Court of Appeals for the Indian Territory. While the cause was pending in that court Oklahoma became a State, and by virtue of the Enabling Act the cause was transferred to the Supreme Court of the new State. On December 24, 1907, a petition was filed on behalf of the plaintiffs in error in the Supreme Court of the State, accompanied with bond, and it was prayed that the cause be removed into the Circuit Court of the United States for the Eastern District of Oklahoma, upon the ground "that by virtue of the Enabling Act it was entitled to be so removed because the suit herein is of a civil nature at law arising under the Constitution and laws of the United States." The application was denied, and, from a judgment of affirmance thereafter entered (95 Pac. Rep. 457; 20 Oklahoma, 274), this writ of error is prosecuted.

The errors assigned in substance are that the Supreme Court of Oklahoma erred in overruling the application to remove, in holding that error was not committed by the trial court in overruling the demurrer to the amended complaint, and in deciding that error was not committed in sustaining the demurrer to the amended answer.

Mr. W. O. Davis, with whom *Mr. L. S. Dolman* and *Mr. R. E. Thomason* were on the brief, for plaintiffs in error:

While ordinarily a compromise of a disputed right will support a promise to pay, if the consideration for the promise is the doing of that which is immoral, forbidden by law or against public policy, the promise will not be enforced even though it grow out of a compromise. If Mrs. Mays did not have the right to sell unallotted land in the Chickasaw Nation, and of this there can be no question, the sale which was otherwise illegal, is not made legal by a compromise. The right of Mrs. Mays to apply for unimproved land of which she was not in possession, was a personal privilege and not the subject of bargain and sale. It would encourage strife, produce delay, and seriously interfere with the public business, if members

of the tribe were permitted to file contests in order to extort money or to be paid not to appear. Whenever there are conflicting claims to an allotment, the Dawes Commission has tried the case upon its merits regardless of the agreement of the parties.

The Secretary of the Interior has decided that any agreement made by the parties to an allotment contest may be disregarded by the Dawes Commission. *Creek Contest, No. 491, Quabner* v. *Greenleaf*, 10th Annual Report. No dismissal or confession of judgment is allowed. Testimony must be taken and the land must be awarded to the person who was the owner of the improvements thereon at the time of the filing of the first application. *Creek Contest, No. 267, Sookey* v. *Smith; Creek Contest, No. 260, Drew* v. *Conrad; Creek Contest, No. 263, Franklin* v. *Franklin; Creek Contest, No. 326, Penman* v. *Haikey.*

The Federal courts take judicial notice of the rules of the Land Department in contest cases. *Coha* v. *United States*, 152 U. S. 221.

The rights of the citizen claiming to own improvements on more land than he is entitled to take, are purely personal and he cannot convey title to any citizen as against one who is in possession of the land. *Chickasaw Allotment Contest, No. 104; Chickasaw Allotment Contest, No. 821.*

The Curtis Act was not intended to give illegal holders any vested or other right to dispose of their illegal possessions to the exclusion of other members of the tribe who have entered upon and selected their *pro rata* share prior to any attempted transfers by those whose possessions are in excess of their *pro rata* shares. *Creek Contest, No. 759; Chickasaw Contest, No. 112.*

The bill of sale after the institution of a contest is not binding on the commissioner. *Chickasaw Contest, No. 197, Jacobs* v. *Townsend; see Stevens* v. *Cherokee Nation*, 174 U. S. 445; *Cherokee Nation* v. *Hitchcock*, 187 U. S. 307, and numerous other cases in which this court has had occasion

to investigate and pass upon unfortunate conditions in the Indian Territory.

The Curtis Bill and the Atoka Agreement, 30 Stat. at L. 641, sought to remedy these conditions, and to prepare the country for equal distribution among the members of the tribe, and to give to each one his rights in severalty.

Where rights are equal and each member entitled to his *pro rata* without cost and without price, one member of the tribe who had no right to sell cannot charge another member of the tribe five thousand dollars for the privilege of taking forty acres of common land in allotment. *Coombs* v. *Miller*, 103 Pac. Rep. 590; *Swanger* v. *Mayberry*, 59 California, 91; *McLaughlin* v. *Ardmore Trust Co.*, 6 Oklahoma Law Jour., No. 11, p. 463; *Lingle* v. *Snyder*, 160 Fed. Rep. 627; *Anderson* v. *Carkins*, 135 U. S. 483, hold that where the contract is against public policy it cannot be enforced.

Mr. S. T. Bledsoe, with whom *Mr. J. B. Thompson* was on the brief, for defendants in error:

The Supreme Court of Oklahoma did not err in refusing to grant the petition for removal; the petition presented no sufficient ground. *Carson* v. *Dunham*, 121 U. S. 421; *Water Co.* v. *Defiance*, 191 U. S. 190; *West. Un. Tel. Co.* v. *Ann Arbor R. Co.*, 178 U. S. 239; *Gold Washing Co.* v. *Keys*, 96 U. S. 199; *Blackburn* v. *Mining Co.*, 175 U. S. 571; *Shreveport* v. *Cole*, 129 U. S. 36; *Florida Central R. R. Co.* v. *Bell*, 176 U. S. 321. See also following decisions of the Court of Appeals for the Indian Territory: *Ikard* v. *Minter*, 4 Ind. Ter. App. 214; *Hewlitt* v. *Hyden*, 69 S. W. Rep. 839; *Turner* v. *Gilliland*, 76 S. W. Rep. 253; *Blocker* v. *McLendon*, 98 S. W. Rep. 166, *Thomason* v. *McLaughlin*, 103 S. W. Rep. 595; *Arkansas* v. *Kansas & Texas Coal Co.*, 183 U. S. 185.

Compromises are favored in law. If a case is tried one party must ultimately lose. If compromises could be avoided at the instance of the party who would have been successful if the case had been tried, no compromise would ever stand.

If, in a trial upon the compromise obligation, the merits of the original controversy could be tried, compromises would be worse than useless in the settlement of litigation. *Buckner* v. *McElroy*, 31 Arkansas, 634; 1 Parsons on Contracts, 444; *Mason* v. *Wilson*, 43 Arkansas, 177; *Richardson* v. *Comstock*, 21 Arkansas, 70; *Burton* v. *Beard*, 44 Arkansas, 556; *Springfield & Memphis Ry. Co.* v. *Allen*, 46 Arkansas, 220; *Hennessey* v. *Baker*, 137 U. S. 78; *Mills County* v. *Burlington & Missouri River R. R. Co.*, 107 U. S. 557; *Knotts* v. *Preble*, 50 Illinois, 226; *A., T. & Santa Fe Ry. Co.* v. *Starkweather*, 21 Kansas, 238, by Brewer, J.; *Little* v. *Allen*, 56 Texas, 133.

Under both the homestead and preëmption laws personal residence for a given time, as well as improving the land are conditions precedent to the right to enter the lands or preëmpt the same. This personal occupancy of the land necessarily cannot be the object of barter and sale.

There is not now, nor has there ever been, any prohibition against a member of the Indian civilized tribe selling his improvements and right of occupancy. This right has been exercised from time immemorial. These transfers have been sustained by the Court of Appeals of the Indian Territory in numerous instances.

The four Arkansas cases, *McFarland* v. *Matthews*, 10 Arkansas, 560; *Hughes* v. *Sloan*, 8 Arkansas, 149; *Carr* v. *Allen*, 5 Blatchford, 63; *Carson* v. *Clark*, 2 Scammon, 113, can be distinguished, and see *Gaines* v. *Rector*, 26 Arkansas, 192; *Gaines* v. *Hale*, 93 U. S. 3; *Randon* v. *Toby*, 11 How. 493.

The defendants seem to have repented their transaction, repentance extending to an attempted repudiation of the burden of the transaction, but not to surrendering the tainted property acquired through the alleged illegal transaction.

The transactions involved were not prohibited by law. Nothing in either agreement prohibits a member of either of said tribes from selling his improvements upon tribal lands or his right to possession thereto to another member of the tribe. In the absence of any statute to that effect Congress

will not be presumed to have intended that the members of these tribes should not be permitted to adjust their allotments by acquiring the improvements of other members upon different tracts of land. See *Thomason* v. *McLaughlin*, 103 S. W. Rep. 595; *Turner* v. *Gilliland*, 76 S. W. Rep. 253; *Blocker* v. *McLendon*, 98 S. W. Rep. 166. Not only was there nothing illegal in the transaction, but the defendants having accepted, appropriated, used, and enjoyed the benefits accruing by virtue of the settlement entered into and having appropriated the proceeds from the sale of certain property as provided on the quit-claim deed are now estopped to controvert the rights of the complainants to recover upon the note sued on herein.

MR. JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the court.

In addition to discussing the merits, the defendant in error presses upon our attention a motion to dismiss, in substance upon the ground that no question of a Federal nature is presented. As the plaintiffs in error had no greater right to prosecute the writ of error than is possessed by suitors generally when seeking the review of a final judgment of a state court (§ 20, Enabling Act, as amended March 4, 1907, c. 2911, 34 Stat. 1287), it results that our power to review is controlled by Rev. Stat., § 709. Irrespective of other contentions, beyond peradventure a question of a Federal nature, however, was raised by the contention, denied by the state court, that a right or privilege existed under a statute of the United States to remove the cause into the Circuit Court of the United States, and the motion to dismiss cannot therefore prevail.

As to the denial of the right to remove.—The claim of plaintiffs in error is that the right to remove the cause into the Circuit Court of the United States arose from the fact that it was a suit arising under the Constitution and laws of the

United States, and that the right existed by virtue of § 16 of the Enabling Act, as amended on March 4, 1907, c. 2911, 34 Stat. 1286, the pertinent portion of which is as follows:

"SEC. 16. That all civil causes, proceedings, and matters pending in the Supreme or District Courts of Oklahoma Territory, or in the United States courts or United States Court of Appeals in the Indian Territory, arising under the Constitution, laws or treaties of the United States, or affecting ambassadors, ministers, or consuls of the United States, or of any other country or State, or of admiralty, or of maritime jurisdiction, or in which the United States may be a party, or between citizens of the same State claiming lands under grants from different States; and all cases where there is a controversy between a citizen of either of said Territories prior to admission and a citizen of any State, or between a citizen of any State, and a citizen or subject of any foreign State or country, in which cases of diversity of citizenship, there shall be more than two thousand dollars in controversy, exclusive of interest and costs, shall be transferred to the proper United States Circuit or District Court established by this act, for final disposition, and shall therein be proceeded with in the same manner as if originally brought therein: *Provided*, That said transfer shall not be made in any such case where the United States is not a party, except on application of one of the parties, in the court in which the cause is pending, at or before the second term of such court after the admission of said State, supported by oath, showing that the case is one which may be so transferred. The proceedings to effect such transfer, except as to time and parties, shall be the same as are now provided by law for the removal of causes from a State court to a Circuit Court of the United States."

In the petition for removal it was alleged in support of the right to remove—

"That the said suit involves the construction of the treaties and laws and acts of Congress concerning the allotment

of lands to the Choctaw and Chickasaw tribes of Indians under the acts of Congress approved April 29, 1898, and the act approved July 1, 1902, commonly known as the 'Atoka and the Supplemental Agreements between the Choctaw and Chickasaw tribes of Indians in the Indian Territory.'

"Petitioner shows that the controversy herein arises from the following facts:

"On February 4, 1904, appellant executed a promissory note to the assignor of appellee for five thousand ($5,000) dollars, due in ninety (90) days, with interest at 8 per cent from date.

"That the consideration for said note was that the payee thereof should cease to prosecute further and abandon a certain contest then pending before the Commission to the Five Civilized Tribes, in which the payee was contestant and the appellant herein was contestee.

"That the appellee took said note with full knowledge of the facts as disclosed by its pleadings. Appellant by demurrer and answer claims that the consideration is contrary to the letter and spirit of the act of Congress of April 29, 1898, and of July 1, 1902; that it is not a legal, valid or any consideration for the note."

The contention that the cause of action arose under the Constitution or laws of the United States is plainly untenable. Recovery by the bank was in no wise predicated upon any right conferred upon it or its assignor to contract, as was done, and the fact that the makers of the note relied for their defense upon provisions contained in certain statutes as establishing that the transaction upon which the right to recover was based was prohibited by law, "would only demonstrate that the suit could not be maintained at all, and not that the cause of action arose under the Constitution or laws of the United States." *Arkansas* v. *Kansas & Texas Coal Co.*, 183 U. S. 185, 190.

As to the asserted Federal questions claimed to arise upon the rulings in respect to the overruling of the demurrer to the

amended complaint and the sustaining of the demurrer to the amended answer.—In the light of the allegations of the complaint and the admissions (either express or implied from the failure to deny) contained in the amended answer, we think the record established that Susan E. Mays and Jennie Lee Williams were members either of the Choctaw or Chickasaw tribe of Indians; that Mrs. Williams selected for allotment and filed upon forty acres of land, upon which were improvements, situated adjacent to the town of Maysville, Indian Territory. The right of Mrs. Williams to select the land being disputed by Susan E. Mays, she filed a contest against the same before the Commission to the Five Civilized Tribes. When this was done, Susan E. Mays was not in the occupancy of any other land liable to allotment. Pending the proceedings, by way of compromise, Susan E. Mays agreed to abandon the contest instituted by her and relinquish her right to the allotment of the land in controversy and the improvements thereon, in consideration of the execution of the note in suit; that said note was executed for the benefit of the separate estate of Jennie Lee Williams and was delivered to Susan E. Mays, who thereupon abandoned the prosecution of her said contest before the Commission, and the allotment of the land to Mrs. Williams followed.

Compromises of disputed claims are favored by the courts (*Hennessey* v. *Baker*, 137 U. S. 78); and, presumptively, the parties to the compromise in question possessed the right to thus adjust their differences. We come then to consider whether, as claimed, there was a want of consideration for the note because of an express or implied statutory prohibition against the transaction which formed the consideration for the note.

In the demurrer to the amended complaint the claim advanced to defeat the right to recover on the note, which was substantially reiterated in the amended answer, was that, in truth, the sale was of the land and was illegal because not made according to the method for acquiring allottable tribal

land provided for in agreements between the Government of the United States and the Choctaw and Chickasaw governments, and because controversies as to allotments of land over which the Dawes Commission had jurisdiction could alone be determined by that body. We do not pause to consider whether these general allegations constituted such a special setting up of a right, privilege or immunity under a law or laws of the United States as is required by Rev. Stat., § 709. Considering the complaint and answer in their entirety, especially when viewed in the light of the allegations of the petition for removal, it clearly results, as stated in the petition for removal, that "the consideration for the said note was that the payee thereof should cease to prosecute further and abandon a certain contest then pending before the Commission to the Five Civilized Tribes, in which the payee was contestant and the appellant herein was contestee." In the argument at bar, while counsel has referred to statutory provisions and to various decisions which it is asserted establish that a sale by an Indian of part of an excessive holding of allottable tribal land or of improvements thereon would not be a valid consideration for a note given to evidence the price of such sale, we have been referred to no statute nor cited to any treaty or agreement made with the Indian tribes giving rise even to the suggestion that where a *bona fide* contest existed between two Indians as to right to a tract or tracts of land arising from a claim based upon selection on the one hand and on the other because of occupancy and improvements, it would be unlawful for the latter to abandon his contention as to his preferential right for a money consideration. Nor have we been referred to any statutory provision which either expressly or impliedly deprived the parties to a contest of their right to compromise simply because of the pendency of the contest before the Commission to the Five Civilized Tribes. An opinion of the United States Court of Appeals of the Indian Territory, a tribunal which was specially competent to pass upon a question of the kind

we are considering, lends support to the conclusion we have reached that a member of either the Choctaw or Chickasaw tribe, when as here there is no showing that such a member was the holder of an excess of lands subject to allotment, was not prohibited at any time from selling his improvements upon tribal land or abandoning his right to the possession thereof to another Indian. The opinion referred to was announced in the case of *Thomason* v. *McLaughlin*, 103 S. W. Rep. 595, in which case, among other questions, the court passed upon the validity of a sale of tribal land by one Indian to another after the enactment of the act of June 28, 1898, known as the Curtis Bill (June 28, 1898, ch. 517, 30 Stat. 495), wherein, in § 29, is embodied the so-called Atoka Agreement. After referring to a provision in § 17 of the act, limiting the extent of an Indian's holding before allotment to the approximate share of the lands to which he and his wife and minor children were entitled, and making it a misdemeanor to retain the possession of an excess of such share after the expiration of nine months from the passage of the act, the court said (p. 598):

"Inasmuch as the sale in this case was made within the nine months' limit, this, of course, would not affect the validity of the sale, even though Lafon had been in possession of more land than that to which he was entitled. It is a well-known fact that many Indians, at the time of the passage of this act, were in possession of large tracts of improved lands, in excess of that to which they were entitled; and under the laws and customs of the different tribes at that time this land was lawfully held. The nine months' provision was introduced into the Curtis Bill for the purpose of giving them an opportunity of disposing of the excess and thereby to get some remuneration for the improvements which they, by their labor and industry, had lawfully made upon the lands. And there is no provision in either of these sections, or anywhere else, that could be construed to deprive an Indian in this Territory of the right to dispose of his holdings to another

Indian, if he desired to do so, in order that he might select his allotment on other lands. The statute did not intend that an Indian should be compelled to take his allotment on the land then held by him. He could sell his improvements and holdings to another Indian for allotment and lay his own on other land which he might find vacant, or which he might, in turn, purchase from another Indian. This method was adopted almost universally by the Indians, and it was not unlawful as between Indians. But to hold an excess of lands after the expiration of the nine months was unlawful and a crime."

While the asserted Federal questions are not so wholly devoid of substance as to be purely frivolous, they are nevertheless without merit, and the judgment must be and it is

Affirmed.